

BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

FILED
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Clerk's Office
N.C. Utilities Commission

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,)	Docket No. P-772, Sub 8
NuVox Communications, Inc.,)	Docket No. P-913, Sub 5
KMC Telecom V, Inc., KMC Telecom III LLC, and)	Docket No. P-989, Sub 3
Xspedius Communications, LLC on Behalf of its)	Docket No. P-824, Sub 6
Operating Subsidiary Xspedius Management Co.)	Docket No. P-1202, Sub 4
Switched Services, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

**JOINT PETITIONERS' SUPPLEMENTAL RESPONSES TO
BELLSOUTH TELECOMMUNICATIONS, INC.'S
FIRST SET OF INTERROGATORIES**

NewSouth Communications Corp. ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC Telecom V, Inc. and KMC Telecom III, LLC (collectively "KMC"), and Xspedius Communications, LLC ("Xspedius"), (collectively the "Joint Petitioners"), by and through their attorneys, hereby submit the following supplemental responses to the First Set of Interrogatories propounded by BellSouth Telecommunications, Inc. ("BellSouth").

GENERAL OBJECTIONS

- 1 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is protected from disclosure by the attorney work product privilege, attorney-client communication privilege, or other applicable privilege.
- 2 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
- 3 Joint Petitioners object to each and every Interrogatory to the extent that it is vague, overly broad, or contains undefined terms susceptible to multiple meanings.

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- 2 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
- 3 Joint Petitioners object to each and every Interrogatory to the extent that it is vague, overly broad, or contains undefined terms susceptible to multiple meanings.

- 4 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is a matter of public record, for example, documents that have been filed with a government agency
- 5 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is in the possession, custody, or control of BellSouth.
- 6 Joint Petitioners object to each and every Interrogatory to the extent that it seeks production of information that is not in the possession, custody, or control of the Joint Petitioners.
- 7 Joint Petitioners object to each and every Interrogatory on the ground that they seek information for an indeterminate period of time and is thus overly broad and unduly burdensome. Joint Petitioners will provide non-privileged information that is responsive to the issue to which the Interrogatory responds.
- 8 Joint Petitioners object to each and every Interrogatory to the extent that it imposes a burden of discovery not required in the Rules of Civil Procedure.
- 9 Joint Petitioners object to each and every Interrogatory to the extent that it is unduly burdensome, expensive, or oppressive to respond to as presently written, particularly where an Interrogatory seeks information regarding “all” instances or examples.
- 10 Joint Petitioners’ subsequent responses to BellSouth’s Interrogatories shall not be deemed an admission as to the relevance or materiality of any of the information sought therein. As discovery is ongoing in this matter, Joint Petitioners reserve the right to supplement and update these responses.

- 1 Identify all persons by name, address, and employer participating in the preparation of the answers to these Interrogatories or supplying information used in connection therewith.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. Joint Petitioners also object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The information requested herein has been previously provided to BellSouth. The name, address, and employer of parties participating in the subject testimony can be found within the written testimony. In addition, Joint Petitioners state that counsel assisted with the written testimony. The names, addresses, and employers for counsel are contained in the record. Given the ongoing nature of the discovery process, Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

2. For each issue that you are identified as sponsoring in the Testimony, please identify all portions of the testimony by line and page number that you drafted or someone else drafted pursuant to your supervision. If someone else drafted your testimony, please identify that person.

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it is unnecessary and unduly burdensome. Joint Petitioners also object on the ground that this Interrogatory seeks information that is protected by the attorney work product doctrine, attorney-client privilege, or other applicable privilege. This matter involves testimony regarding over forty issues, and Joint Petitioners have provided BellSouth with a chart identifying the sponsors of all portions of the subject testimony. As Joint Petitioners are represented by counsel, Joint Petitioners' testimony was created with the assistance and under the guidance of counsel. Each witness actively participated in the drafting, review and editing of every portion of testimony that they sponsored and, as indicated, they have adopted it as their own. Joint Petitioners will not provide responsive information.

3. Please provide the basis and identify all facts and/or documents that support your statement on Page 19 of the Testimony that "BellSouth's proposed language is designed to provide it with the opportunity to, in effect, hold newly adopted rate amendments hostage, and allow BellSouth to delay the implementation of an approved rate to the extent that the Commission's decision is unfavorable to it."

NuVox, NewSouth KMC and Xspedius Response:

Joint Petitioners note that Issue G-1 has been resolved.

4. Please provide the basis and identify all facts and/or documents that support your statement on Page 21 of the Testimony that "this is a restrictive definition designed to serve some undefined and hereto fore undisclosed BellSouth motive."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The basis of this statement comes from the impression Joint Petitioners derived during negotiations with BellSouth. As demonstrated in the testimony, Joint Petitioners believe that BellSouth will use its proposed definition to prevent Joint Petitioners from using UNEs to serve customers other than those that meet the restrictive definition of "end user" proposed by BellSouth. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

5. Please provide the basis and identify all facts and/or documents that support your statement on Page 22 of the Testimony that "[f]or example, under BellSouth's proposed definition of 'End User,' it is arguable that certain types of CLP customers, such as Internet Service Providers ('ISPs'), might not be considered to be 'End Users.'"

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners understand that during the ongoing negotiation process BellSouth has accepted Joint Petitioners' statement. Nevertheless, Joint Petitioners note that ISPs are indeed considered end users. Joint Petitioners direct BellSouth's attention to *General Communications Inc. v. Alaska Communications Systems Holdings, Inc.*, 16 FCC Rcd. 2834 (2001), *aff'd in part and rev'd in part*, *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (2002); *GTE Service Corporation v. FCC*, 224 F.3d 768 (D.C. Cir. 2000); and *Access Charge Reform*, First Report & Order, 12 FCC Rcd 15982, ¶ 348 (1997). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

6. Please provide the basis and identify all facts and/or documents that support your statement on Page 25 of the Testimony that “[c]ertain traffic passed to NewSouth by BellSouth over our Supergroups with a 0 CIC would likely result in unbillable and uncollectible revenues.” In providing a response, please identify the traffic at issue and all instances when such traffic actually resulted in unbillable and uncollectible revenues, identifying the amounts of any unbillable and uncollectible revenues.

NuVox, NewSouth KMC and Xspedius Response:

Joint Petitioners note that Issue G-3 has been resolved.

7. Regarding Issue No G-4, please identify all telecommunications interconnection agreements that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object given the information requested is in the public domain and available to BellSouth through other means. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

NuVox identifies those documents produced, if any, pursuant to Request for Production No. 6. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should the circumstances warrant such action.

NewSouth Response:

NewSouth identifies those documents produced, if any, pursuant to Request for Production No. 6. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should the circumstances warrant such action.

KMC Response:

KMC identifies those documents produced, if any, pursuant to Request for Production No. 6. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should the circumstances warrant such action.

Xspedius Response:

Xspedius identifies those documents produced, if any, pursuant to Request for Production No. 6. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should the circumstances warrant such action.

8. Regarding Issue No. G-4, please identify all contracts that you have with your customers, end users, vendors, or other third-parties that contain a provision that is identical or similar to the provision you are requesting the Commission adopt in this proceeding.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. Joint Petitioners object to this Interrogatory on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

NuVox identifies those documents produced, if any, pursuant to Request for Production No. 7. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should the circumstances warrant such action.

NewSouth Response:

NewSouth identifies those documents produced, if any, pursuant to Request for Production No. 7. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should the circumstances warrant such action.

KMC Response:

KMC identifies those documents produced, if any, pursuant to Request for Production No. 7. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should the circumstances warrant such action.

Xspedius Response:

Xspedius identifies those documents produced, if any, pursuant to Request for Production No. 7. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should the circumstances warrant such action.

9. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that "the standard liability-cap formulations - starting from a minimum (in some of the more conservative contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract - more universally appearing in commercial contracts."

OBJECTION: Joint Petitioners object to the Interrogatory on the ground that it is vague, overly broad, and unduly burdensome. Joint Petitioners also object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The subject statement is based upon the well-known and widely accepted practices of commercial contracting. In support of this statement, Joint Petitioners identify the following legal authority: *Clause of the Month: Provision for Limiting Service Provider's Liability*, Computer Law Strategist, Vol. 14, No. 7; Pg. 2 (1997); Michael F. Pillow, *International Commercial Sales and Service Contracts*, 21 NO. 6 ACCA Docket 62 (2003); Marc T. Shivers & Andre J. Brunel, *Contractual Limitations of Liability (a/k/a "LOLs" or Why the Other Party Is Laughing Out Loud)*, The Computer & Internet Lawyer, Vol. 19, No. 5, Pg. 6 (2002); Jeff Ruster, *Mitigating Commercial Risks in Project Finance*, Public Policy for the Private Sector (February 1996); Charles F. Carroll, *Construction Contracts: Key Legal and Business Considerations from the Lender's Point of View*, Practising Law Institute, PLI Order No. A4-4433 (1993); Robert S. Metzger et al., *When More Produces Less: California's IT Terms and Conditions Produce Less Competition and Lower Value*, Procurement Lawyer (2001); Rendi L. Mann-Stadt, *Limitation of Liability for Interruption of Service for Regulated Telephone Companies: An Outmoded Protection?*, 1993 U. Ill. L. Rev. 629 (1993). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

10. Please provide the basis and identify all facts and/or documents that support your statement on Page 28 of the Testimony that "[t]he Petitioners' proposed risk-vs.-revenue trade off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well." In responding to this Interrogatory, please identify each and every contract and/or commercial transaction in "electric power, natural resources and public procurement" that support your testimony.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The subject statement is based upon the well-known and widely accepted practices of commercial contracting. In support of this statement, Joint Petitioners identify the following legal authority: *Clause of the Month: Provision for Limiting Service Provider's Liability*, Computer Law Strategist, Vol. 14, No. 7; Pg. 2 (1997); Marc T. Shivers & Andre J. Brunel, *Contractual Limitations of Liability (a/k/a "LOLs" or Why the Other Party Is Laughing Out Loud)*, The Computer & Internet Lawyer, Vol. 19, No. 5, Pg. 6 (2002); Christy Cornell Kunin, *Comment: Unilateral Tariff Exculpation in the Era of Competitive Telecommunications*, 41 Cath. U.L. Rev. 907 (1992); Robert S. Metzger et al., *When More Produces Less: California's IT Terms and Conditions Produce Less Competition and Lower Value*, Procurement Lawyer (2001). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

11. Please identify the "long-established principles of general contract law and equitable doctrines," with appropriate legal citations that you are referring to on Page 28 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners direct BellSouth's attention to the written testimony. Within the written testimony, BellSouth will find what Joint Petitioners identify as the "long established principles of general contract law and equitable doctrines." The testimony is quite clear. Joint Petitioners described the principles and doctrines as "the right to a refund or recovery of, and/or the discharge of any further obligations with respect to, amounts paid or payable for services not properly performed." In support of this statement, Joint Petitioners identify the following legal authority: *McClure Engineering Associates, Inc. v. The Reuben Donnelley Corp.*, 428 N.E.2d 1151 (Ill. App. Ct. 1981); *Discount Fabric House of Racine, Inc. v. Wisconsin Telephone Co.*, 345 N.W.2d 417 (Wis. 1984); Leslie S. Marell, *Negotiate Limitation Of Liabilities Clause To Your Benefit*, Purchasing Law Report (2001); Restatement 2nd of Contracts, § 373; Marc T. Shivers & Andre J. Brunel, *Contractual Limitations of Liability (a/k/a "LOLs" or Why the Other Party Is Laughing Out Loud)*, The Computer & Internet Lawyer, Vol. 19, No. 5, Pg. 6 (2002). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

12. Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "[i]n my experience, it is a common-sense and universally-acknowledged principle of contract law that a party is not required to pay for non-performance or improper performance by the other party." In responding to this Interrogatory, please identify each and every "experience" you have had that supports your statement.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Please see response to Interrogatory No. 11. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

- 13 Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "a breach in the performance of services results in losses that are greater than their wholesale costs"

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The statement referenced within this Interrogatory expresses the opinion of policy witnesses that a breach by BellSouth will, if it is of such a nature that it affects, delays, or degrades the service provided by a CLP to a customer, will impose harm on the CLP, in terms of lost revenue, goodwill, and/or brand value, that exceeds the amount paid to BellSouth to obtain the relevant wholesale inputs. Joint Petitioners direct BellSouth's attention to those documents produced in response to Request for Production No. 13. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

- 14 Please identify all facts, legal authority and/or documents that support your statement on Page 29 of the Testimony that "these losses will ordinarily cost a carrier far more in terms of direct liabilities vis-a-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach "

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

See Response to Interrogatory No. 13.

15. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that the "breach in the performance of services results in losses that are greater than their wholesale costs."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it is duplicative of Interrogatory number 13. Joint Petitioners also object to this Interrogatory on the ground that that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

At this time, Joint Petitioners are unable to identify any cost study, analysis, or other documents in response to this interrogatory. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

16. Regarding your statements on Page 29 of the Testimony, please identify any cost study, analysis, or other documents that analyze, review or establish that "losses will ordinarily cost a carrier far more in terms of direct liabilities vis-a-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it is duplicative of Interrogatory number 14. Joint Petitioners also object to this Interrogatory on the ground that that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

At this time, Joint Petitioners are unable to identify any cost study, analysis, or other documents in response to this interrogatory. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

17. Please identify all end users or customers by name, working telephone number ("WTN") and date of loss that you lost as a result of any alleged breach of performance by BellSouth.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

See documents produced pursuant to Request for Production No. 13. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

See documents produced pursuant to Request for Production No. 13. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

After a diligent review of its records, KMC is unable to identify any such end user or customer. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should the circumstances warrant such action.

Xspedius Response:

See documents produced pursuant to Request for Production No. 13. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

18. Regarding Issue No. G-5, please identify all of your tariffs and/or end user contracts that do not contain any limitation of liability language.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, , or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object to this item on the ground that their tariffs are a matter of public record that are easily accessible by BellSouth. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

Please see documents produced pursuant to Request for Production No. 14. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

After a diligent search of its records, NewSouth is unable to identify any documents in its possession, custody, or control that are responsive to this Interrogatory. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

After a diligent search of its records, KMC is unable to identify any documents in its possession, custody, or control that are responsive to this Interrogatory. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should circumstances warrant such action.

Xspedius Response:

After a diligent search of its records, Xspedius is unable to identify any documents in its possession, custody, or control that are responsive to this Interrogatory. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

19. Please identify all limitation of liability language that exists in your tariffs and/or end user contracts.

OBJECTION: Joint Petitioners object to this Interrogatory on the grounds of relevance. In addition, Joint Petitioners object to this Interrogatory on the ground that of the undue burden that would result from Joint Petitioners having to identify all limitation of liability language in all of Joint Petitioners tariffs and/or end user contracts. Joint Petitioners note that their tariffs are matters of public record and are easily accessible by BellSouth. Joint Petitioners object to this Interrogatory on the grounds that it is vague, overly broad, and thus unduly burdensome. Joint Petitioners further object to the extent that it is duplicative. Subject to and without waiving these objections, Joint Petitioners state that they will produce documents, if any, responsive to the specific Requests herein to the extent required by applicable law.

NuVox Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should circumstances warrant such action.

Xspedius Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

20. Please identify all legal authority, with appropriate citation, that supports your statement on Page 31 of the Testimony that "a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object that this item seeks discovery of information protected by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

See GA ST § 13-6-5 (Ga. Code Ann. § 13-6-5). See also John Mallock & Co. v. Kicklighter, 73 S.E. 1073 (1912) and II Restatement of Contracts § 350. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

21. Please identify all instances where you have asked a customer or end user rejected your request to agree to liability provisions that are similar to BellSouth's liability provisions, as stated on Page 32 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory on the grounds that it is unintelligible. Joint Petitioners are unable to discern what information BellSouth seeks.

22. As to your statements on Page 32 of the Testimony, please identify every instance where you have "conceded" limitation of liability language to "attract customers in markets dominated by incumbent providers," including the name of the customer, the WTN, and date of contract evidencing any concession.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object to the item on the grounds that it mischaracterizes the initial testimony in this case, and as such does not warrant a response. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners are unable to identify with specificity any instance where they have had to concede limitation of liability language to attract customers in markets dominated by incumbent providers, although Joint Petitioners recollect being forced to concede limitation of liability language in the past. However, Joint Petitioners expect that they may have to concede limitation of liability language in the future. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

23. Please identify all facts, legal authority and/or documents that support your statement on Page 39 of the Testimony that "[a]s is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each." In responding to this Interrogatory, please identify the specific "commercial-services" that you are referring to

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony to which this item refers expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners had no specific commercial services in mind when making this statement. Joint Petitioners intended to note only that the service provider, in the telecommunications service industry as well as other service industries, usually carries a heavier burden with regard to indemnity, given the greater risk in the performance of its contractual obligations. "Commercial-services," as used by Joint Petitioners, refers to any contractual relationship whereby a party agrees to provide some service, whatever it may be, to another in exchange for consideration. BellSouth, as the service provider in this contractual arrangement, bears the greater risk in the performance of its obligations and, therefore, carries a heavier burden when it comes to indemnifying Joint Petitioners in the event those obligations are breached. In support of this contention, Joint Petitioners identify the following legal authority: *Clause of the Month: Provision for Limiting Service Provider's Liability*, Computer Law Strategist, Vol. 14, No. 7; Pg. 2 (1997); Michael F. Pillow, *International Commercial Sales and Service Contracts*, 21 NO. 6 ACCA Docket 62 (2003); Marc T. Shivers & Andre J. Brunel, *Contractual Limitations of Liability (a/k/a "LOLs" or Why the Other Party Is Laughing Out Loud)*, The Computer & Internet Lawyer, Vol. 19, No. 5, Pg. 6 (2002); Gerald R. Singer, *Shifting Risk of Accidental Loss in Business Contracts*, ALI-ABA Course of Study Materials, Course Number SC40 (March 1998). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

24. Please identify all indemnification language that exists in your tariffs and/or end user contracts.

OBJECTION: Joint Petitioners object to this Request on the ground that it is duplicative of previous items in this set of discovery. Joint Petitioners also object to this Request on the grounds that it is vague, overly broad, and thus too burdensome to respond. Joint Petitioners also object to the extent that this item seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object on the ground that all tariffs are publicly available and readily accessible by BellSouth. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should circumstances warrant such action.

Xspedius Response:

Please see documents produced in response to Request for Production No. 16. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

25. Please identify, with appropriate legal citation, the “generally-accepted contract norms providing precisely to the contrary,” that you are referring to on Page 40 of your Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony to which this item refers expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Please see response to Interrogatory No. 23. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

26. Regarding Issue G-9, please identify all non Section 252 arbitration proceedings, by date and case-caption, initiated by you against BellSouth at a state public service commission to resolve a dispute between you and BellSouth.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object that the information sought in this item are matters of public record to which BellSouth has ready access, or such information is already in the possession of BellSouth. On the basis of these objections, Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

BellSouth has withdrawn this interrogatory.

27. Regarding your statement on Page 44 of the Testimony that "BellSouth often is able to force carriers into heavily discounted, non-litigated settlements," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to the carriers at issue, the amount of discount, the litigation that was settled, and how you became aware of each settlement.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object given that BellSouth already possesses the information requested. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

NuVox has entered into non-litigated settlements with BellSouth regarding issues related to Section 251 of the 1996 Act. The terms of all settlements with BellSouth are confidential. All documents regarding such settlements are in the possession, custody or control of BellSouth. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

NewSouth has entered into non-litigated settlements with BellSouth regarding issues related to Section 251 of the 1996 Act. The terms of all settlements with BellSouth are confidential. All documents regarding such settlements are in the possession, custody or control of BellSouth. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

KMC has entered into non-litigated settlements with BellSouth regarding issues related to Section 251 of the 1996 Act. The terms of all settlements with BellSouth are confidential. All documents regarding such settlements are in the possession, custody or control of BellSouth. Given the ongoing nature of the discovery process, KMC reserves the right to amend or supplement this response should circumstances warrant such action.

Xspedius Response:

Xspedius has entered into non-litigated settlements with BellSouth regarding issues related to Section 251 of the 1996 Act. The terms of all settlements with BellSouth are confidential. All documents regarding such settlements are in the possession, custody or control of BellSouth. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

28. Regarding your statement on Page 47 of the Testimony that "Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying the "BellSouth-initiated litigation" by case-caption you are referring to and the principle of Georgia law (by legal citation) you are referring to.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object to this Interrogatory to the extent that it seeks information that is public available and accessible by BellSouth. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

BellSouth has initiated litigation in Georgia against both NuVox and NewSouth. *See Enforcement of Interconnection Agreement between BellSouth telecommunications, Inc. and NuVox Communications, Inc.*, Docket No. 12778-U, Georgia Public Service Commission; *Enforcement of Interconnection Agreement between BellSouth Telecommunications, Inc. and NewSouth Communications Corp.*, Docket No. 18133-U, Georgia Public Service Commission. It is a fundamental tenet of Georgia law that "contracting parties are presumed to have incorporated the laws that existed when they entered into the contract, unless they explicitly excluded those obligations from the contract." NuVox Proceeding, *Recommended Order on Complaint* at 8 (Feb. 11, 2004); *see also* NuVox Proceeding, Staff Memorandum at 4 (April 23, 2004) ("Georgia law states that parties are presumed to enter into agreements with regard to existing law"). BellSouth nonetheless refuses to concede that this presumption results in the incorporation of FCC and Commission Orders into its Agreements with NuVox and NewSouth in the absence of express language creating exemptions therefrom. *See generally* BellSouth pleadings in Docket Nos. 12778-U and 18133-U, Georgia Public Service Commission. *See also*, BellSouth pleadings in *BellSouth Telecommunications, Inc. v. NewSouth Communications Corp.*, Docket No. P-772 Sub 7, North Carolina Utilities Commission; *BellSouth Telecommunications Inc. v. NewSouth Communications, Corp.*, Docket No. 2004-0063-C, Public Service Commission of South Carolina; *Complaint and Request for Summary Disposition BellSouth Telecommunications, Inc. against NewSouth*

***Communications Corp. To Enforce Contract Audit Provisions, Docket No: 040028-TP,
Florida Public Service Commission.***

Joint Petitioners further note that the full text of the testimony referenced in this item states that "Because several of the Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this principle of Georgia law, all Petitioners believe it is important that the Agreement be explicit on this point." Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

29. Regarding your statement on Page 47 of the Testimony that "BellSouth's proposal attempts to turn universally accepted principles of contracting on their head," please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to an identification of the "principles of contracting" (by legal citation) you are referring to.

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it is vague, overly broad, and unduly burdensome. Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

During these negotiations, Bellsouth and the Joint Petitioners have agreed that Georgia law will govern all matters related to the subject interconnection agreement(s). Joint Petitioners' written testimony clearly sets forth that parties to a contract may agree to rights and obligations different from those provided by existing law, however, the parties need to do so explicitly. This legal theory is evident in Georgia law. Under Georgia law, contracts are presumed to incorporate existing law. *Van Dyck v. Van Dyck*, 263 Ga. 161, 163 (1993). Where parties intend to stipulate that their contract not be governed by existing law, then the other legal principles to govern the contract must be expressly stated therein. *Jenkins v. Morgan*, 100 Ga. App. 561, 562 ((1959). Recently, the Georgia Public Service Commission ("GPSC") relied on this principle in *Enforcement of Interconnection Agreement Between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.*, Georgia Commission Docket No. 12778-U, Order Adopting in Part and Modifying in Part the Hearing Officer's Recommended Order (June 29, 2004). Joint Petitioners presume that BellSouth is fully aware of this proceeding's details and, therefore, Joint Petitioners will forego a thorough discussion of the case. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

30. Regarding Issue G-13, please identify all instances by date, carrier, and interconnection agreement where BellSouth has included a rate in the rate sheet of an interconnection agreement that is not the rate approved by the Commission, as set forth on Page 48 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue G-13 has been resolved.

31. Regarding your statement on Page 53 of the Testimony that “[n]early all of the CLPs involved in this arbitration have had one bad experience or another with BellSouth using one of its Guides as controlling authority for an issue between the Parties instead of the Agreement,” please provide the basis of the statement and identify all facts/and or documents that support the statement, including but not limited to identifying each “bad experience,” the CLP experiencing the “bad experience,” the date of the “bad experience,” and the reason for the “bad experience.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue G-15 has been resolved.

32. Please explain in detail your statement on Pages 55-56 of the Testimony that “[g]iven the proliferation of the Guide references, accepting BellSouth's language would severely undermine the integrity of the Agreement and, indeed, the entire Section 251/252 negotiation and arbitration process.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue G-15 has been resolved.

33. Regarding Issue G-16, please identify all instances where you have determined that BellSouth tariff changes are "inconsistent with the Agreement, or are unreasonable or discriminatory" as set forth on Page 56 of the Testimony, describing in detail the tariff change at issue, the date of the tariff change, and the reason why you believed that the tariff change was inconsistent, unreasonable, or discriminatory.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue G-16 has been resolved.

34. Please identify the paragraphs of the Triennial Review Order ("TRO") that support the following statements on Page 60 of your testimony wherein you state "It is my understanding that the FCC concluded, in the TRO, that carriers may convert from UNEs and UNE Combinations to wholesale services and vice versa. It is also my understanding that the FCC concluded such conversions should be seamless and not affect any end-user customer's service "

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-4(a) has been resolved.

35. Please provide the basis of and identify all facts and/or documents that support your statement on Page 62 of the Testimony that "converting a UNE or Combination (or part thereof) to Other Services or tariffed BellSouth access services should not require substantial development and related costs."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-4(b) has been resolved.

- 36 Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that retermination of circuits is "likely to be nothing more than a cross-connect."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners respond to this item on the basis that the testimony quoted in this item regards Issue 2-5(C), and discusses the rate that should apply to converting a service arrangement from a UNE or Combination to another type of service. When such conversions are required, in the vast majority of cases they are likely to be performed electronically via a simple records change. If, however, any physical rearrangement of facilities is necessary, that rearrangement is not in most circumstances likely, in the opinion of Joint Petitioners, to require any more work than would be necessary to install a cross-connect. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

37. Please provide the basis of and identify all facts and/or documents that support your statement on Page 67 of the Testimony that "[t]he CLPs are not disconnecting a service but rather are rearranging a service that cannot be maintained as currently offered under the Agreement."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners respond to this item on the basis that the testimony quoted in this item regards Issue 2-5(C), and discusses the rate that should apply to converting a service arrangement from a UNE or Combination to another type of service. When such conversions are required, in the vast majority of cases they are likely to be performed electronically via a simple records change. If, however, any physical rearrangement of facilities is necessary, that rearrangement is not likely, in the opinion of Joint Petitioners, to entail the disconnection of service to a customer as if the customer had cancelled entirely. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

38. Please identify the "FCC rules" you are referring to in the following statements on Page 69 of the Testimony:

- a. "The FCC's rules require that costs associated with Routine Network Modifications can and should be recovered by BellSouth as part of the expense associated with network investments, and therefore should already have been factored into BellSouth's TELRIC costs."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-7 has been resolved.

- b. "Indeed, the FCC's rules are very clear that there may not be any double recovery by BellSouth of Routine Network Modification costs by virtue of BellSouth recovering both the cost of the UNE and a new charge for Routine Network Modifications that already have been factored into the UNE rate."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-7 has been resolved.

- c. "The FCC's rules are also very clear that the onus is on BellSouth affirmatively to demonstrate that a requested modification was not contemplated by BellSouth as a 'Routine Network Modification', and that the costs associated with the requested modification were not factored into BellSouth's TELRIC cost studies in any way whatsoever."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-7 has been resolved.

39. Please identify the FCC rules that you allege on Page 72 of the Testimony "do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client communication privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶¶ 579, 581-584 (2003) (*Triennial Review Order*). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

40. Please identify all legal authority that supports your statement on Page 72 of the Testimony that the "FCC has defined 'commingling' as the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under Section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client communication privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶ 579 (2003) (*Triennial Review Order*). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

41. Please identify all legal authority that supports your statement on Page 72-73 of the Testimony that the "FCC has also concluded that Section 271 places requirements on BellSouth to provide network elements, services, and other offerings, and those obligations operate completely separate and apart from Section 251."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client communication privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶¶ 653-655 (2003) (*Triennial Review Order*). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

42. Please identify all legal authority that supports your statement on Page 73 of the Testimony that "[t]herefore, the FCC's rules unmistakably require BellSouth to allow Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, pursuant to Section 271."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground it seeks information that is protected under the attorney-client communication privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶ 579, 581-584 (2003) (Triennial Review Order). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

43. Please identify the paragraphs of the TRO that support your statement on Page 74 of the Testimony that "[i]t is my understanding that the FCC held, in the TRO, that the definition of local loop includes multiplexing equipment "

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the attorney-client communication privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶ 214 (2003) (*Triennial Review Order*). See also *Triennial Review Order* Appendix B. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

44. Please provide the basis of and identify all facts and/or documents that support your statement on Page 76 of the Testimony that “[a] minimum billing period of 30 days, 2 months, etc. . . would carry with it exclusive use right thereby inhibiting a customer's ability to switch carriers as he or she wishes ”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-10 has been resolved.

45. Regarding Issue 2-12 and your testimony on Page 77, please identify the paragraphs of the TRO that you are referring to when you state “[s]uch a provision would be inconsistent with the FCC's Triennial TRO.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-12 has been resolved.

46. Please identify the “issues” and the “reconsideration petition” by date and docket you are referring to on Page 78 of the Testimony, wherein you state: “BellSouth's proposed language is clearly over-expansive and proposes to pre-decide issues currently before the FCC in at least one reconsideration petition.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-12 has been resolved.

47. Please identify the specific rights to loop access and any legal support for these rights that you are referring to on Pages 78-79 of the Testimony, wherein you state: "Petitioners' proposed language in Section 2.1.1.2 merely seeks to retain whatever rights CLPs presently enjoy with respect to loop access

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-13 has been resolved.

48. Please identify all legal support for your statement that CLPs have the right to "obtain a portion of loop bandwidth so that voice-grade services may be provided by one carrier and other services, such as xDSL-based transport services may be provided by another," as set forth on Page 79 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-13 has been resolved.

49. Please identify all legal support for your statement that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning,” as set forth on Page 80 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-13 has been resolved.

50. Please identify all legal support for your statements that "FCC orders are presumed to become law, and affect substantive rights, on their effective dates. That legal truism does not have to be expressly stated in every FCC rule," as set forth on Page 82 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-15 has been resolved.

51. Please identify all legal authority, with appropriate citations, that supports your statement that "all facilities and work involved in provisioning, maintaining and repairing UNEs, including loops, must be priced at TELRIC compliant rates," as set forth on Page 83 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-17 has been resolved.

52. Please provide the basis of and identify all facts and/or documents that support your statement on Page 85 of the Testimony that "dispatch charges significantly undercut Petitioners' ability to compete effectively."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-17 has been resolved.

53. Please identify all customers or end users by name, WTN, and date of loss that you were unable to obtain or lost or were unable to acquire because of dispatch charges.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-17 has been resolved.

54. Please identify all dispatch charges that you charge your end users or customers.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-17 has been resolved.

55. Please identify when you are planning to deploy or use "Etherloop" or "G.HDSL Long" technologies, as described on Page 92 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners object on the ground that BellSouth mischaracterizes the initial testimony, such that no response is warranted. Furthermore, Joint Petitioners object because the information sought is confidential, proprietary information. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

Etherloop and G.HDSL Long are two technologies that are in the research and development stage. Accordingly, as of today a deployment date, if any, for these technologies is uncertain. Given the ongoing nature of the discovery process, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

Etherloop and G.HDSL Long are two technologies that are in the research and development stage. Accordingly, as of today a deployment date, if any, for these technologies is uncertain. Given the ongoing nature of the discovery process, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

The testimony referenced within this Interrogatory is that of NuVox and NewSouth. As is evident within the written testimony, KMC did not sponsor the noted testimony and, therefore, KMC will provide no response to this Interrogatory.

Xspedius Response:

The testimony referenced within this Interrogatory is that of NuVox and NewSouth. As is evident within the written testimony, Xspedius did not sponsor the noted testimony and, therefore, Xspedius will provide no response to this Interrogatory.

56. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 93 of the Testimony that "Federal law provides, without limitation, that CLPs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant [sic] rates."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the attorney-client privilege, work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

57. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that "the manner in which UNE loops are provisioned, and whether they are usable for CLP service, is squarely within the parameters of Section 251."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-21 has been resolved.

58. Please identify all legal authority, with appropriate citations, that supports your statement on Page 98 of the Testimony that “loop unbundling is a separate checklist item under Section 271, and thus this Commission retains the authority to set rules and policy for its provisioning.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-21 has been resolved.

59. Please identify all legal authority, with appropriate citations, that supports your statement on Pages 99-100 of the Testimony that "the FCC has already found, on a nationwide basis, that CLPs should not be made to build new NIDs."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-22 has been resolved.

60. Regarding Issue 2-23(D), please identify any and all of the steps, measures, protections, procedures or other processes that you would use to access an "available pair."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-23(D) has been resolved.

61. Regarding Issue 2-24, please identify all instances by date, time, location and WTN, where you have determined that testing of the loop at a place other than the distribution frame and at the end user's premises was required to "detect and pinpoint a problem," as set forth on Page 106 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-24 has been resolved.

- 62 Please identify all legal authority, with appropriate citations, that supports your statement on Page 106 of the Testimony that federal law "imposes no limitation on a CLP's right to test loops - both lit and dark fiber loops - at any technical feasible point."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-24 has been resolved.

63. Please identify all legal authority, with appropriate citations, that supports your statements on Page 107 of the Testimony that "Petitioners will be paying BellSouth for these loops, and should be permitted to do whatever testing is necessary to ensure that they work."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-24 has been resolved.

64. Please identify all legal authority, with appropriate citations, that supports your statements on Page 108 of the Testimony that "[t]he law does not require an LOA from a third party carriers [sic]."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

65. Regarding Issue 2-28(A) please describe in detail your understanding of "DSL transport" or "DSL service" as used on Page 111 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

DSL transport and DSL service is the provision of connectivity capable of transmitting data, voice, and other content in digitized form at speeds of 124 Kbps or higher using digital subscriber line technology. DSL transport service entails the provision of DSL transport, as well as the provision of Internet access service, e-mail service, and other features. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

66. Please identify all legal authority, with appropriate citations, that supports your statement on Page 117 of the Testimony that “[t]he FCC has concluded that such pre-audits constitute an unjust, unreasonable and discriminatory term and condition for obtaining access to UNE combinations and are prohibited.”⁴

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-31 has been resolved.

67. Please provide the basis of and identify all facts and/or documents that support your statement on Page 118 of the Testimony that "BellSouth's conversions of special access to EELs have resulted in damages of approximately \$1.6 million."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-31 has been resolved.

68. Please describe in detail how you calculated the \$1.6 million in damages described on Page 118 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-31 has been resolved.

69. Please identify all FCC or state commission rules or orders that support your position that BellSouth should only be able to perform an EELs audit for cause as set forth on Page 121 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-33(a) has been resolved.

70. Please identify all telecommunications interconnection agreements that have identical or similar language for EELs audits that you are proposing in this proceeding.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required by the Rules of Civil Procedure. Joint Petitioners further object to this request on the ground that interconnection agreements are matters of public record and are easily accessible by BellSouth. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

This question is unreasonably vague as to the specific language for which the item seeks exemplar interconnection agreements. If by this question BellSouth refers to Joint Petitioners' proposal for the frequency, procedures, and costs of EEL audits, NuVox states that its Interconnection Agreement with BellSouth is governed by applicable law, including orders issued by the FCC. Such Interconnection Agreements would therefore contain the same or similar terms as what Joint Petitioners have proposed, as Joint Petitioners' proposed language reflects, or is some instances mirrors, FCC orders relevant to EEL audits.

NewSouth Response:

See NuVox Response.

KMC Response:

See NuVox Response.

Xspedius Response:

See NuVox Response.

71. Please provide a detailed explanation of what you mean by the “concept of materiality,” as set forth on Page 124 of the Testimony, providing in detail, examples of when noncompliance would and would not be material.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that this aspect of Issue 2-33(C) has been resolved.

72. Please identify all interconnection agreements that include the “concept of materiality” for EELs audits.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that this aspect of Issue 2-33(C) has been resolved.

73. Please identify every instance of "controversy" regarding EELs audits by date, carrier, how each controversy was resolved that support your Testimony on Page 125, wherein you state: "Given the history of controversy that has surrounded BellSouth's EEL audits, the Petitioners understandably have genuine concerns about the legitimacy of BellSouth's EEL audits."

OBJECTION: Joint Petitioners object to this Interrogatory on the grounds that it is vague and unduly burdensome. Joint Petitioners further object given that BellSouth was a party to all EEL audits and related proceedings and, thus, has equal or better access to the requested information. Accordingly, Joint Petitioners will not provide BellSouth with responsive information.

74. Please identify all legal authority, with appropriate citations, that supports your statement on Page 128 of the Testimony that "FCC's rules require that BellSouth provide nondiscriminatory access to the dark fiber transport UNE at any technically feasible point, including access for purposes of conducting splicing and testing activities "

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 2-37 has been resolved.

75. Please identify all legal authority, with appropriate citations, that supports your statement on Page 131 of the Testimony that BellSouth has a "CNAM unbundling obligation."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020 ¶¶ 549-551 (2003) (*Triennial Review Order*). See also 47 C.F.R. § 51.319(d)(4) and § 51.319(i)(B). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

76. Identify all instances where you lost an end user and that end user returned to BellSouth or where you were unable to acquire an end user because "caller ID does not appear," as set forth on Page 131 of the Testimony. In responding to this request, please identify the customer name, date, and WTN for each end user.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object to the item on the grounds that it mischaracterizes the initial testimony in this case, and as such does not warrant a response. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Presently, Joint Petitioners are unable to identify any specific instance because they do not record or track such information. However, this is not to say that a lost customer returning to BellSouth, or an inability to acquire an end user, has not occurred in the past because caller ID does not appear. Moreover, this is not to say that in the future Joint Petitioners will not lose or fail to acquire a customer because caller ID does not appear. Joint Petitioners recollect that they have in fact lost customers for this reason. Joint Petitioners direct BellSouth's attention to the record in *US LEC v. BellSouth*, North Carolina Commission Docket No. P-55, SUB 1480 (2003). More specifically, Joint Petitioners direct BellSouth's attention to the Order Issuing Preliminary Injunction and Scheduling Evidentiary Hearing issued in the the above proceeding by Order of the Commission on December 23, 2003. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

77. Identify all instances when BellSouth mischarged you "for a Local Channel when an infra-office cabling scheme is used to connect [your] point-of-presence to the BellSouth switch," as set forth on Page 135 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-1 has been resolved.

78. Please identify any and all outages that you consider to be a “global outage” for purposes of this agreement.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-2 has been resolved.

79. Please identify all instances in which BellSouth provided a root cause analysis to you.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-2 has been resolved.

80. Please identify every instance and all documents that support your Testimony on Page 140 that you have experienced a global outage involving an entire trunk group. In responding to this request, please identify each outage by date, WTNs affected, location of outage, the trunk groups affected, how long the outage existed, the reason for the outage, and whether BellSouth provided a root cause analysis for the outage.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-2 has been resolved.

81. Please identify all instances and any documents that relate, address, apply or refer to the use of a root cause analysis to respond to customer inquiries regarding service outages or otherwise.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-2 has been resolved.

82. Please identify all documents that relate, address, apply, or refer to any policies you have regarding advising customers as to service problems, "the steps taken to repair and avoid their recurrence in the future," as set forth on Page 141 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-2 has been resolved.

83. Regarding Issue 3-3, please identify all documents, including but not limited to contracts, tariffs, policies statements, and training manuals, that address, relate, pertain, or refer to the backbilling of customers.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-3 has been resolved.

84. Please identify all instances where you were unable to bill a customer or end user after 90 days. In responding to this request, please identify each instance by date, customer name, WTNs, and amount of charges that you were unable to bill.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-3 has been resolved.

85. Please provide the basis of and identify all facts and/or documents that support your statement on Page 145 of the Testimony that "there is a potential that BellSouth will pay third parties without carefully scrutinizing their bills and the legal bases therefore, and expect reimbursement from CLPs, for unjust termination charges."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The statement referenced within this Interrogatory expresses the opinion of policy witnesses that there is a "potential" that BellSouth will pay third parties and expect reimbursement from CLPs without BellSouth carefully scrutinizing the third party bills to see whether the third party charges are proper. That Joint Petitioners see a "potential" is a belief held by Joint Petitioners and, thus, encompasses the basis underlying the referenced statement. Joint Petitioners have provided sufficient facts to support this statement within the written testimony. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

86. Please identify all instances where BellSouth paid third parties without carefully scrutinizing its bills and then attempted to charge CLPs for these "unjustified termination charges," as set forth on Page 145 of the Testimony. In responding to this request, please identify each instance by date, third party, WTNs, CLP that was asked to pay the "unjust termination charges," the amount of said charges, and whether the CLP disputed these charges

OBJECTION: Joint Petitioners object to this Interrogatory on the grounds that this item is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object to this Interrogatory on the ground that it mischaracterizes the relevant testimony such that no response is required. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Please see response to Interrogatory No. 85. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

87. Please identify all instances where BellSouth paid "third parties even when it has no contractual or other legal obligation to do so," as set forth on Page 145 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory on the grounds that this item is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory on the ground that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object to this Interrogatory on the ground that it mischaracterizes the relevant testimony such that no response is required. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Please see response to Interrogatory No. 85. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

88. Please provide the basis of and identify all facts and/or documents that support your statement on Page 147 of the Testimony that "[b]ecause factors reporting involves temporal measurements, it is more than likely that replacement factors created by BellSouth will not lend themselves to an apples-to-apples comparison."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-5 has been resolved.

89. Please provide the basis of and identify all facts and/or documents that support your statement on Page 148 of the Testimony that "BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The basis for this testimony is clearly provided within the written testimony. This testimony is based on the fact that only BellSouth, because of its monopoly legacy and continuing market dominance, is in the position to provide transit service capable of connecting carriers. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstance warrant such action.

90. Please identify all legal authority, with appropriate citations, that supports your statement on Page 150 of the Testimony that "[t]ransiting is an interconnection issue firmly ensconced in Section 251 of the Act."

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Petition of Verizon South, Inc. for Declaratory Ruling That Verizon is Not to Transit InterLATA EAS Traffic between Third Party Carriers and Request for Order Requiring Carolina Telephone and Telegraph Company to Adopt Alternative Transport Method, Docket No. P-19, Sub 454, North Carolina Utilities Commission, Order Denying Petition (Sept. 22, 2003). See also Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc. and AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration, CC Docket Nos. 00-218, 00-249 and 00-251, DA 02-1731 (WCB rel. July 17, 2002) (Virginia Arbitration Order). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstance warrant such action.

91. Please identify all legal authority, with appropriate citations, that supports your statement on Page 157 of the Testimony that "[t]he FCC has held that obligations imposed by Section 251(c)(2) and 251(c)(3) include 'modifications to incumbent LECs facilities to the extent necessary to accommodate interconnection or access to network elements.'"

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony quoted in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 19020, ¶¶ 250, 639-644 (2003) (*Triennial Review Order*). See also 47 C.F.R. §§ 51.319(a)(1)(iii), 51.319(a)(8). Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstance warrant such action.

92. Please state whether you have installed the "appropriate hardware" in your switches to allow for OCn interconnection, as alleged on Page 158 of the Testimony.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-10 has been resolved.

93. Please identify all legal authority, with appropriate citations, that supports your statement on Page 163 of the Testimony that “[t]o the extent the Parties are carrying non-transit and non-interLATA Switched Access Traffic, the parties should proportionally split the recurring charges for trunks and associated facilities.”

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-13 has been resolved.

94. Please identify what percentage of your traffic consists of "non-transit and non-interLATA Switched Access Traffic."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 3-13 has been resolved.

95. Regarding your Testimony on Page 166, please identify all instances where, after collocating in a BellSouth premise, you have been unable to “gain access to loops, transport, multiplexers, switch ports, optical terminations and the like” by date, central office, and specific equipment you were unable to access.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 4-1 has been resolved.

96. Please identify all legal authority, with appropriate citations, that support your statement on Page 191 of the Testimony that BellSouth is required by federal law to provide subscribers payment history in a CSR.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-1 has been resolved.

97. Regarding your testimony on Page 192 of the Testimony that certain Commissions have "already determined" that BellSouth must include subscriber payment history in a CSR, please identify the Commissions you are referring to, the docket in which a Commission made such a finding, and the date of any such finding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-1 has been resolved.

98. Regarding Issue 6-2, for the last 12 months, please provide, on a monthly basis, the number of CSRs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a CSR and the date you provided the CSR to BellSouth.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-2 has been resolved.

99. Regarding Issue 6-4, please identify all products and/or services that you have actually ordered or wish to order from BellSouth that you contend cannot be ordered electronically.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-4 has been resolved.

100. For each such product or service identified in Interrogatory No. 99, please provide on a monthly basis the number of Local Service Requests ("LSRs") that you submitted to BellSouth for each product and/or service for the last 12 months.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-4 has been resolved.

101. Please provide the basis of and identify all facts and/or documents that support your statement on Page 201 of the Testimony that "NewSouth's experience has been that a significant amount (we currently estimate 25%) of NewSouth's facility orders have to be submitted manually because of address validation errors" and that "NewSouth has found BellSouth to be delinquent in updated address records."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-4 has been resolved.

102. Please identify all legal authority, with appropriate citations, that support your position on Page 202 of the Testimony that Service Date Advancements should be charged at TELRIC pricing standard.

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony referenced in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 ¶¶ 620, 672, 678 (1996) ("First Report and Order") and *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 19020 ¶ 29 (2003) (*Triennial Review Order*). See also 47 C.F.R. Section 51.501 et seq. Given the ongoing nature of discovery, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

103. Regarding Issue 6-6, for the last 12 months, please provide, on a monthly basis, the number of FOCs you provided to BellSouth and the number of business days that elapsed on average between the date of receipt of a request for a FOC and the date you provided the FOC to BellSouth.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-6 has been resolved.

104. Regarding Issue 6-7, for the last 12 months, please provide, on a monthly basis, the number of Reject Responses you provided to BellSouth and the number of business days that elapsed on average between the date of a request for a Reject Response and the date you provided the Reject Response to BellSouth.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-7 has been resolved.

105. Please identify all legal authority, with appropriate citations, that supports your position on Pages 208-209 of the Testimony that BellSouth is obligated under federal law to provide performance and maintenance history for circuits.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-8 has been resolved.

106. Regarding your statements on Pages 211-212 of your Testimony, please identify (1) all efforts you have undertaken to develop your own OSS systems, (2) the expected completion of your own OSS systems, and (3) all components of your own OSS that remain to be completed.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-9 has been resolved.

107. Please identify all documents that relate, address, apply, or refer the development of your own OSS.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-9 has been resolved.

108. Please identify all legal authority, with appropriate citations, that support your statements on Page 212 of the Testimony that "BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between a Petitioner and BellSouth Long Distance or another third party carrier."

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-10 has been resolved.

109. Please identify all end users you lost or were unable to acquire, by name, WTN, and date of loss, as a result of a requirement that the porting of the end user or customer to the CLP is contingent on either the CLP having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the customer or End User changing its PIC.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-10 has been resolved.

110. Please identify all long distance carriers that you do not have an operating, billing, and/or collection arrangement with.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners note that Issue 6-10 has been resolved.

111. Please provide the basis of and identify all facts and/or documents that support your statement on Page 216 of the Testimony that "mass migrations at most amount to bulk porting situations . . ."

OBJECTION: Joint Petitioners object to this Request on the grounds that it is vague, overly broad, and unduly burdensome. Joint Petitioners also object to the extent that this item seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, all non-privileged documents, if any, responsive to this request and in the possession of the Joint Petitioners will be produced in accord with the discovery guidelines mandated by this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

The statement referenced within this Interrogatory expresses the opinion of policy witnesses that switching several customers of one CLP to another involves largely the same operations as the switching of one CLP customer to another CLP, done in bulk. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

112. Regarding your statement on Page 217 of the Testimony that “[t]oo many carriers already have faced too many obstacles to getting mass migrations accomplished by BellSouth in a reasonable manner,” please identify (1) the specific obstacles you are referring to; (2) the carriers attempting to perform the mass migration; and (3) the location of the customer base that was migrated or was attempted to be migrated.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

See Xspedius Response. Given the ongoing nature of discovery, NuVox reserves the right to amend or supplement this response should circumstances warrant such action.

NewSouth Response:

See Xspedius Response. Given the ongoing nature of discovery, NewSouth reserves the right to amend or supplement this response should circumstances warrant such action.

KMC Response:

See Xspedius Response. Given the ongoing nature of discovery, KMC reserves the right to amend or supplement this response should circumstances warrant such action.

Xspedius Response:

Xspedius is an acquisitive company. It began by purchasing out of bankruptcy the assets of e.spire Communications, Inc. and last year purchased the Texas assets of Mpower Communications, Inc. In connection with the Mpower asset purchase, Xspedius faced unilateral pricing from another RBOC in connection with the purchase and migration of assets. In going through this process,

Xspedius realized that it needed to ensure that future interconnection agreements placed limits on the charges that could be assessed under these circumstances. The acquiring company usually needs to move quickly to bring the assets of the two companies together. Accordingly, the incumbent is, to a large extent, in a position to dictate the process and the pricing associated with that process. BellSouth has proposed a new process for these circumstances, but the pricing is still set unilaterally by BellSouth. It is critical that there be TELRIC limits on the pricing imposed by BellSouth under these circumstances. Given the ongoing nature of discovery, Xspedius reserves the right to amend or supplement this response should circumstances warrant such action.

113. Please identify all legal authority, with appropriate citations, that supports your position on Page 218 that mass migration services should be priced at TELRIC.

OBJECTION: Joint Petitioners object to this Interrogatory on the ground that it seeks information that is protected under the work product doctrine or other applicable privilege. Joint Petitioners further object on the ground that the information requested is not discoverable under the Rules of Civil Procedure. The testimony referenced in this item expresses the opinion of policy witnesses. Based on these objections, the Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 ¶¶ 620, 672, 678 (1996) ("First Report and Order"); *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 19020 ¶ 29 (2003) (*Triennial Review Order*). See also 47 C.F.R. Section 51.501 et seq. Given the ongoing nature of discovery, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

114. Please identify the specific steps and processes that you believe are needed to perform mass migration of customers.

OBJECTION: Joint Petitioners object to this Request on the grounds that it is vague, overly broad, and thus unduly burdensome. Joint Petitioners also object to the extent that this item seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners also object to this Request on the ground that it seeks information that is within the possession, custody and control of BellSouth, and that Joint Petitioners cannot reasonably be expected to know all the methods and procedures required for placing mass migration orders in BellSouth's OSS system to which Joint Petitioners have never had access. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

Joint Petitioners respectfully note that the processes believed to be needed for mass migration have been provided to BellSouth via email from John Heitmann to James Tamplin and Rhona Reynolds on August 24, 2004. To reiterate the contents of that email, Joint Petitioners believe that the following processes are necessary to perform the mass migration of customers:

- OSS Charge – per spreadsheet, per line or per number of lines (bulk)
- Order Coordination – for physical moves
- Project Coordination – to manage completion of the entire spreadsheet
- Billing/Records Change – database updates per circuit/service arrangement or at carrier level
- Disconnect Orders – to discontinue circuits or service arrangements
- Retermination Orders – to a new CFA
- Completion Notification – per circuit, service arrangement or spreadsheet
- Retagging of circuit – per circuit or number of circuits
- Collocation Records Change – per collocation arrangement or CFA
- Interconnection Trunk Records Change – per trunk or group of trunks

Joint Petitioners note that they asked BellSouth to identify other processes that might be needed to perform mass migrations, but Joint Petitioners have yet to receive anything from BellSouth. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

115. Please identify all documents that relate, address, apply, or refer to your allegations on Pages 218-219 of the Testimony that Xspedius once attempted "to accomplish mass migration of several special access circuits to UNE loops."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Joint Petitioners further object to this Interrogatory on the ground that all information regarding requests for mass migration is in BellSouth's possession. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox: Response

The testimony referenced within this Interrogatory is solely that of Xspedius. As is evident within the written testimony, NuVox did not sponsor the noted testimony and, therefore, NuVox will provide no response to this Interrogatory.

NewSouth Response:

The testimony referenced within this Interrogatory is solely that of Xspedius. As is evident within the written testimony, NewSouth did not sponsor the noted testimony and, therefore, NewSouth will provide no response to this Interrogatory.

KMC Response:

The testimony referenced within this Interrogatory is solely that of Xspedius. As is evident within the written testimony, KMC did not sponsor the noted testimony and, therefore, KMC will provide no response to this Interrogatory.

Xspedius Response:

Xspedius directs BellSouth's attention to email correspondence already in BellSouth's possession which involved communications between both parties regarding Xspedius' attempt to mass migrate special access circuits to UNE Loops. Given the ongoing nature of the discovery process, Xspedius reserves the right to amend or supplement this response should circumstance warrant such action.

116. Please identify all instances in which you have billed BellSouth or another carrier for services rendered more than 90 days after the bill date on which those charges ordinarily would have been billed.

OBJECTION: Joint Petitioners object to this Request on the grounds that it is vague, overly broad, and thus unduly burdensome. Joint Petitioners also object to the extent that this item seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. The information sought in this Request is not relevant to the matter being arbitrated in Issue 7-1. On the basis of these objections, Joint Petitioners will not provide responsive information.

NuVox, NewSouth, KMC and Xspedius Response:

To date, Joint Petitioners have been unable to identify any instance where they have billed BellSouth or another carrier for services rendered more than 90 days after the bill date. However, Joint Petitioners' search for responsive information is ongoing, and, in the event Joint Petitioners uncover any responsive information, Joint Petitioners will immediately supplement this response.

- 117 Please identify all charges that would not be subject to the exemptions to the 90 day backbilling prohibition you testify about on Page 222 of the Testimony.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox, NewSouth, KMC and Xspedius Response:

This Interrogatory mischaracterizes the testimony. The testimony in fact states that there "may be circumstances" under which parties may backbill. At this time, Joint Petitioners have no examples of the charges referenced in this Interrogatory. Given the ongoing nature of the discovery process, Joint Petitioners reserve the right to amend or supplement this response should circumstances warrant such action.

118. Please provide the basis of and identify all facts and/or documents that support your statement on Page 229 of the Testimony that "[i]t is my understanding that the BFR/BNR process is a lengthy, expensive and typically unsatisfactory process."

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

In 1998, NuVox contacted Mark Cathey, then-Vice President of Interconnection Services for BellSouth, and requested that billing records be compiled in a certain format. Mr. Cathey asked that NuVox complete a BFR Request form and return same to BellSouth. NuVox complied with Mr. Cathey's directions. BellSouth responded to the BFR by stating that the cost associated with the Nuvox request would range from several hundred thousand dollars to millions of dollars and, additionally, that the entire cost was to be borne by NuVox. NuVox found the quoted cost to be prohibitively expensive and believed that such cost could not be absorbed by the company. Accordingly, NuVox abandoned further attempts to acquire that which was requested in the BFR. In further response to this Interrogatory, NuVox identifies those documents produced pursuant to Request for Production No. 66.

NewSouth, KMC and Xspedius Response:

These Joint Petitioners are familiar with the troubles of NuVox and other carriers. Upon hearing of the trials and tribulations of such carriers, these Joint Petitioners came to the opinion that the BFR/BNR process is lengthy, expensive and unsatisfactory. These Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

119. Please identify all instances where you have used the BFR/BNR process with BellSouth.

OBJECTION: Joint Petitioners object to this Interrogatory to the extent that it is vague, overly broad, and unduly burdensome. In addition, Joint Petitioners object to this Interrogatory to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, or is beyond the scope of what is required under the Rules of Civil Procedure. Subject to and without waiving any objections, Joint Petitioners will provide non-privileged, responsive information, if any, pursuant to the discovery guidelines of this proceeding.

NuVox Response:

See Response to Interrogatory No. 118.

NewSouth, KMC and Xspedius Response:

Presently, these Joint Petitioners cannot identify an instance where any of them have used the BFR/BNR process with BellSouth. These Joint Petitioners reserve the right to amend or supplement this response should the circumstances warrant such action.

Respectfully submitted,
JOINT PETITIONERS

By:

Henry C. Campen, Jr.
Parker Poe Adams & Bernstein LLP
Wachovia Capitol Center
150 Fayetteville Street Mall
Suite 1400
Raleigh, NC 27602-0389
Telephone: (919) 890-4145
henrycampen@parkerpoe.com

John J. Heitmann
Stephanie A. Joyce
Garret R. Hargrave
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W
Suite 500
Washington, D.C. 20036
(202) 955-9600
(202) 955-9792 (facsimile)

Their Attorneys

Dated: December 7, 2004

Joint Petitioners
North Carolina Utilities Commission
Docket Nos. P-772, Sub 8 *et al.*
BellSouth's 1st Set of Interrogatories
December 7, 2004

ATTACHMENTS TO
REQUEST NO. 13

CONFIDENTIAL & PROPRIETARY & FILED UNDER SEAL
(XSP000090-XSP000091)

-----Original Message-----

From: Hinkle, Carl
Sent: Tuesday, October 12, 2004 4:05 PM
To: Turer, Danielle; Falvey, Jim; McLaurin, Michelle
Cc: Arbogast, Allison
Subject: FW: Recall Systems
Importance: High

Jim-

Here is an e-mail I received today regarding Recall systems See the bottom of the e-mail chain for an explanation from the customer

Thanks,

Carl Hinkle
Xspedius Communications
Customer Management Specialist - Atlanta, GA
Phone (678) 443-1234
Toll Free (800) 538-5750 Ext 1234
Fax (678) 443 0965
E-Mail carl.hinkle@xspedius.com

-----Original Message-----

From: McLaurin, Michelle
Sent: Tuesday, October 12, 2004 2:43 PM
To: Hinkle, Carl
Subject: Recall Systems
Importance: High

Do you know about this one? How did that circuit get disconnected? Are there pending orders in the system?

thanks,
Michelle

-----Original Message-----

From: Reed, David
Sent: Tuesday, October 12, 2004 2:13 PM
To: Carson, Rabinai

XSP 000087

10/12/2004

Cc: Coaxum, David; Dunn, Scott; McLaurin, Michelle
Subject: FW: Redunancy Issues

Recall Systems is down again today due to BellSouth disconnecting their circuit. What is the process we will be going through to ensure the customer does not continue to have these outages. This customer has been down three times in the last 90 days

Best Regards,

David W. Reed IV

Office (678) 443-1244

Cell (770) 310-8745

david.reed@xspedius.com

-----Original Message-----

From: Reed, David

Sent: Friday, October 08, 2004 11:19 AM

To: Carson, Rabinai

Cc: Coaxum, David; Dunn, Scott

Subject: FW: Redunancy Issues

Mr Carson,

Below is the description outlining the issues one of our customers is experiencing with BellSouth techs compromising the integrity of Xspedius provided circuits. Feel free to contact the customer directly. I informed Sanjay that I would send it up through our channels to initiate any influence we may have on correcting the situation.

Best Regards,

David W. Reed IV

Office (678) 443-1244

Cell (770) 310-8745

david.reed@xspedius.com

-----Original Message-----

From: Dunn, Scott

Sent: Friday, October 08, 2004 9:51 AM

To: Reed, David

Subject: RE: Redunancy Issues

I would recommend that you send your complaint through our legal channels

Scott

-----Original Message-----

From: Reed, David

Sent: Thursday, October 07, 2004 4:07 PM

To: Dunn, Scott

Cc: Brewington, Stanley

Subject: FW: Redunancy Issues

Scott,

XSP 000088

Is there anyone we can forward this to that can file a complaint with BellSouth on behalf of Xspedius?

Stan,

Could you please send Sanjay the BGP Questionnaire

Best Regards,

David W. Reed IV

Office (678) 443-1244

Cell (770) 310-8745

david.reed@xspedius.com

-----Original Message-----

From: Sanjay Arora [mailto:sarora@recallsystems.com]

Sent: Thursday, October 07, 2004 3:56 PM

To: Reed, David

Subject: Redunancy Issues

Hi David,

We have recently had issues with our internet access. On two separate occasions within the past 60 days, BellSouth technicians have made changes that have interrupted our service. On the first occasion, on August 17th (Ticket #102771) the BellSouth technician pulled our T-1 out of our suite and reassigned it to another suite. It took a full day to get this incident resolved. The second incident occurred approximately 10 days ago, our network started exhibiting the same type of issues. This time we checked with security before calling Xspedius and there was a BellSouth technician in the building. Once we located the technician he was able to bring our connectivity back up.

Since this issue seems to be a more and more common issue my management staff has asked me for a contingency plan. I would like to set up a redundant SDSL connection and use BGP routing. What do I need to do to get this process started?

Please let me know if you have any questions or concerns

Regards,
Sanjay Arora
Systems Engineer
Recall Systems, Inc
770-551-8888 ext. 8460

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and then delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

XSP 000089

Joint Petitioners
North Carolina Utilities Commission
Docket Nos P-772, Sub 8 *et al*
BellSouth's 1st Set of Interrogatories
December 7, 2004

ATTACHMENTS TO REQUEST NO. 16

**CONFIDENTIAL & PROPRIETARY & FILED UNDER SEAL
(NVX000040)**

**SERVICE EXHIBIT T
LOCAL ACCESS
WHOLESALE SERVICES AGREEMENT**

**BUILDING OWNER UNLESS OTHERWISE AGREED UPON
BETWEEN CUSTOMER AND BUILDING OWNER.**

9.5 Cross-Connect Transmission Levels. Transmission (DSN and OCN) levels and quality of signal transmission must be such as to not damage or otherwise harm or degrade Qwest facilities or network(s). Transmission signals must not cause alarms on the Qwest network. Customer represents and warrants that any Cross-Connects purchased hereunder shall be used for cross connects at such signal level as specified in the associated order form, and shall operate within the electrical or optical characteristics for such signal levels in accordance with Industry and Qwest standards for the same (which Qwest standards shall be provided upon written request). Customer will use its best efforts to ensure a prompt response time for Cross-Connect failures on Customer's side of the demarcation point, and any such failure on Customer's side of the Cross-Connect shall not give rise to outages or outage credits pursuant to any Service Exhibits under the Agreement.

10. Outage Credits

10.1 Service Level Agreement. The On-Net Local Access Service is subject to the following availability service level agreement ("Service Level Agreement") that is effective as of the first day of the second month after initial installation of a particular On-Net Circuit. Customer shall, subject to the terms, exclusions and restrictions described herein, be entitled to receive from Qwest a credit if the availability ("Circuit Availability") of a particular On-Net Local Access Service for any calendar month falls below the percentage shown in the credit schedule included in this section. Qwest shall guarantee the Circuit Availability only to the point to which Qwest can perform remote loop-back testing, even if the Demarcation Point extends past such testing point. An On-Net Circuit shall for purposes of this document be deemed to be unavailable to Customer only if the On-Net Circuit ("Affected Circuit") is subject to an interruption (other than as noted in Section 10.5 hereinafter) that results in the total disruption of the On-Net Local Access Service ("Outage"). The credit ("Outage Credit") to which Customer may be entitled under this section shall be equal to the applicable Circuit Availability Percentage (identified in the table below) of Customer's monthly recurring charges (MRCs) for the Affected Circuit after application of any credits or discounts ("Eligible Circuit Charges"). The Outage Credit shall not include credits on any other monthly recurring charges charged to Customer for any other services. Qwest does not provide Outage Credits for Leased Circuits.

The applicable Circuit Availability Percentage is calculated as follows:

$$\left[\frac{[(\text{Number of days in Calendar Month} \times 24 \times 60) - (\text{Minutes of Outage on Affected Circuit in Calendar Month})]}{[(\text{Number of days in Calendar Month} \times 24 \times 60)]} \right] \times 100$$

10.2 OUTAGE CREDIT SCHEDULE FOR ON-NET FACILITIES.

% Circuit Availability		Minutes of Outage	Credit Applicable
100%	99.999	Less than 1	0%
<99.999	99.99	>1 to 4	10%
<99.99	99.9	>4 to 43	25%
<99.9	99.5	>43 to 216	50%
<99.5	Below	>216	100%

For purposes of measuring Customer's Circuit Availability, the Qwest Trouble Management System determines the number of full minutes of an Outage. The length of each Outage shall be calculated in minutes. An Outage shall be deemed to have commenced upon verifiable notification thereof by Customer to the Qwest Trouble Management System, or, when indicated by network control information actually

known to Qwest network personnel, whichever is earlier. Each Outage shall be deemed to terminate upon restoration of the Affected Circuit, as evidenced by appropriate network tests by Qwest.

10.3 Chronic Outages. An On-Net Circuit suffers from Chronic Outages if such On-Net Circuit, measured over any calendar month, experiences more than five unrelated (5) Outages, or more than forty-eight (48) aggregate hours of Outages. Subject to Sections 10.2 and 10.3 below, Customer may as its sole and exclusive remedy for Chronic Outages, upon thirty (30) days' prior written notice to Qwest, terminate the affected On-Net Circuit without further obligation.

10.4 Outage Credit Terms and Conditions

- To be eligible for an Outage Credit under the Service Level Agreement, Customer must, in addition to complying with the other terms included herein, (i) be in good standing with Qwest and current in its payment obligations under the Agreement and (ii) submit necessary supporting documentation and request reimbursement or credits hereunder within thirty (30) days of the conclusion of the service month in which the Outage upon which the Outage Credit request is based occurs. In the event Customer fails to comply with the condition set forth in the immediately preceding sentence, Customer shall, with respect to that remedy, have waived its right to such remedy.
- Qwest shall not process Outage Credits for the objective included in the Service Level Agreement less than \$25.00 per Affected Circuit for any Calendar Month.
- In no event shall Qwest provide Outage Credits to Customer for an Affected Circuit that exceeds one hundred percent (100%) of the monthly recurring charge for the Affected Circuit or the stated applicable maximum credit percentage.
- Qwest will determine the Outage Credits provided to Customer by totaling the eligible Outage minutes throughout the Calendar Month on an Affected Circuit, subject to the restrictions and exclusions herein.
- The remedies included in this document are Customer's sole and exclusive remedies for disruption of the Service and shall apply in lieu of any other service interruption guarantee or credit, outage guarantee or credit or performance credit for which Customer might have otherwise been eligible.

10.5 Restrictions and Exclusions.

An Outage shall not be deemed to have occurred in the event that the On-Net Circuit is unavailable or impaired due to any of the following:

- Interruptions on an On-Net Circuit that is not an "Accepted Circuit" where an Accepted Circuit is one that Qwest and Customer have tested and mutually agree is working as ordered following provisioning of an order or change order;
- Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to use or modify Customer's service;
- Interruptions due to failure of power at Customer premises or failure or poor performance of Customer premise equipment;
- Interruptions during any period in which Qwest or its agents are not afforded access to the premises where the access lines associated with Customer's service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore service;
- Interruptions during any period when Qwest has posted on the Qwest Web site or communicated to Customer in any other manner that Customer's service will be unavailable for Scheduled Maintenance or rearrangement purposes, or Customer has released the service to Qwest for the installation of a Customer Service Order;



XSPEDIUS COMMUNICATIONS SERVICES AGREEMENT

General Terms and Conditions

This Services Agreement ("Agreement") is between Xpedius Communications, LLC on behalf of its applicable service providing entity ("Xpedius") and the individual or entity identified as the customer (hereinafter referred to as "Customer") on the front page of this Agreement. This Agreement consists of the signature page, Service Order Form(s) the General Terms and Conditions, and any addenda added by the agreement of the parties. The following rates, terms and conditions supplement those set out in the applicable Xpedius Federal and State tariffs, and interstate and international service agreements posted on Xpedius web site (formerly our FCC tariffs), hereinafter collectively referred to as "tariff" or "tariffs". In the event of any conflict among this Agreement and its Addenda, Attachments, Service Order Form, or the terms or rates of Xpedius' tariffs, the terms and rates of the tariff shall control if the service itself is tariffed. The Parties agree to be bound by the terms of this Agreement, and affirm that each have caused this Agreement to be executed by their respective duly authorized representatives on the dates written below their names.

- SERVICES.** Xpedius will provide the Services referenced above in accordance with the terms of this Agreement and of Xpedius' applicable tariffs.
- OBLIGATIONS OF CUSTOMER.** Customer agrees to provide all information, access, and support required for timely installation and proper use of the Services and to comply with all of the terms and conditions of this Agreement. Customer also agrees and assures that Customer's use of the Services will at all times be consistent with the use intended, is not utilized in an unlawful manner, and is used in such a manner as to prevent damage to Xpedius' network or equipment.
- TERM/COMMITMENT.** For each Service, the initial term commitment ("Initial Term") of this Agreement will begin on the date a requested Service is first installed and made available to Customer, and will continue for the number of months or years set forth in the applicable Service Order Form. Upon the expiration of the Initial Term, this Agreement automatically renews for a one (1) year term at the same monthly rate unless either Party provides notice of intent to terminate the Agreement at least thirty (30) days prior to the end of the then current term.
- FEES AND CHARGES.** The charges and fees for Xpedius' Services are categorized on the applicable Service Order Form as: (1) "Recurring Charges" and (2) "Non-Recurring Charges." Recurring Charges are billed monthly to Customer. Non-Recurring Charges shall be billed as they occur. All Charges will begin to accrue at the time such Services have been activated. Any applicable Federal, State, or local use, excise, sales or privilege taxes, duties or similar liabilities charged to or against Xpedius or Customer because of the Service and equipment furnished by Xpedius, shall be paid by the Customer. Customer will not be billed for taxes or fees based on Xpedius' income. In addition, Xpedius may bill Customer for other legally applicable charges including, but not limited to, Federal End User Common Line Charge (EULC), Pre-Subscribed Inter-Exchange Carrier Charge (PICC), Local Number Portability (LNP) Charge, Federal and State Universal Service Fund (USF), and Primary Inter-Exchange Carrier (PIC) Charge. The charges for the Services not including the taxes and regulatory charges, shall be referred to as the "Rate(s)". The Rates set out on the Customer's Service Order Form will vary depending on Customer's Initial Term commitment and do not include taxes and other regulatory charges. Xpedius also offers additional Service features that may be ordered, for an additional cost, after Services are initially installed. Customer will be liable for all reasonable charges, including but not limited to attorney's fees and costs incurred by Xpedius to enforce the terms of this Agreement or due to Customer's non-compliance with the terms herein.
- PAYMENT.** Customer will be invoiced monthly. Customer's first invoice will include all Non-Recurring Charges. Recurring Charges for the first full month, any additional Charges incurred as a result of Customer's special request (such as expedited charges) and the pro-rated amount for Services provided during installation. Customer agrees to pay all charges within thirty days of the date of Xpedius' invoice to Customer ("Due Date"), including charges which Customer disputes in a timely manner in good faith and in accordance with the dispute provisions set forth in this Agreement. Customer shall pay Xpedius without on disputed invoices if payment is made after the Due Date. The interest rate will be one and a half percent (1 1/2%) per month or the maximum rate allowable by law. If Customer's check is returned for non-payment, Customer will be billed a return check fee. Xpedius reserves the right to bill Customer retroactively for any Services Customer received which Xpedius previously had not billed (excluding charges which Xpedius have previously waived). Subject to any applicable state and federal regulations, Xpedius may not be obligated to remit for transportation, toll-free, local or other numbers to another carrier if Customer has an outstanding balance.
- INTERRUPTION OF SERVICE/CREDIT.** For an interruption of tariffed Services ("Interruption"), the liability, if any of Xpedius arising out of or in any way connected with any defect, error, omission, delay, mistake, interruption, suspension, or other failure in connection with furnishing services, facilities or maintenance, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected service for the time period during which the interruption occurred. Xpedius shall not be liable for any credit to be given to a Customer, for any interruption of less than Twenty-Four (24) hours which is: (1) caused by the willfulness or negligence of the wireline carrier; Customer or any entity other than Xpedius; (2) due to the failure of equipment, systems or services provided by the Customer or any other entity other than Xpedius; or (3) during periods when the Customer elects to use the Service on an interrupt basis.
- TERMINATION BY XSPEDIUS.** If Customer does not pay all undisputed charges by the Due Date, Customer will have ten (10) days from the Due Date to cure any late payments before Xpedius may exercise its right, subject to any state or federal regulations to discontinue providing the Services to Customer without notice. Xpedius reserves the right to terminate this Agreement if it determines, in its reasonable business judgment, that it will not continue to provide such Services under this Agreement. In that event, Xpedius will provide no less than thirty (30) days prior notice of such termination.
- TERMINATION BY EITHER PARTY.** Either Party shall have the right to terminate this Agreement without liability including Early Termination Charges, (1) if Xpedius is prohibited from furnishing the Service(s) under this Agreement or (2) upon expiration of the Initial Term Commitment by providing the other party 30 days written notification.
- EARLY TERMINATION CHARGES.** If a Service or this Agreement is terminated prior to the end of the Initial Term, then, commencing on the effective date of such termination, Customer will be subject to early termination charges equal to one hundred percent (100%) of the monthly recurring charges (plus the number of months remaining in the Term commitment, plus any waived installation fees and 3rd party provisioning and/or construction costs ("Early Termination Charges"). Customer agrees to pay all such Early Termination Charges within thirty days of Customer's notice of termination or immediately upon receipt of Xpedius' last invoice to Customer ("Final Invoice"). All requests to terminate Services must be submitted in writing to Xpedius 30 days prior to the termination effective date.
- BILL DISPUTES.** Customer's billing disputes or request for adjustments together with all supporting documentation, must be made in good faith, and must be received in writing by Xpedius within 60 days from the date of the invoice, or Customer's right to raise such billing disputes is waived. Customer shall otherwise timely pay any undisputed amounts. If Xpedius determines that a disputed charge was billed in error, Xpedius will issue a credit to reverse the amount that was incorrectly billed. If Xpedius determines that a disputed charge was billed correctly, Xpedius will inform Customer of such determination and provide Customer with proof of correct billing. If Customer does not accept proof as definitive the dispute will be escalated for an official review/resolution with Xpedius Communications and Customer in accordance with the Agreement. In the event that the escalated dispute is resolved against Customer or in the event that Customer accepts the foregoing proof as definitive (or if Customer fails to notify Xpedius within 30 days that Customer does accept proof as definitive), Customer shall pay the previously disputed amount within 10 days thereafter.
- RESOLUTION OF DISPUTES.** Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth herein. In the event of a Dispute, and upon the written request of either Party, each of the Parties shall appoint within five (5) business days after a Party's receipt of such request, a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable information made by one party to the other shall be honored. If the parties are unable to resolve issues related to a Dispute within thirty (30) days of a Party's request it made for appointment of designated representatives as set forth above, either Party may seek any relief to which it is entitled to under Applicable Law.
- USE OF SERVICES.** Xpedius' Acceptable Use Policy ("AUP") governs Customer's use of Xpedius' Service. Xpedius' AUP covers policies including, but not limited to security, email, the Internet, and copyright matters. Customer agrees to fully comply with the AUP. Customer can review the current copy of Xpedius' AUP by logging on to the website at <http://www.xpedius.com>. The AUP is incorporated into this Agreement by reference. Xpedius' AUP is dynamic and may be modified from time-to-time without prior notice to Customer. At any time, Customer may also send Xpedius a written request for the most recent copy of the AUP. Xpedius will investigate all alleged violations of the AUP and, when Xpedius is reasonably able to do so, or is otherwise not barred by any governmental intervention, Xpedius will provide a reasonable opportunity for Customer to resolve the alleged dispute. Violation of the AUP by Customer or any of Customer's customers may result in immediate termination of this Agreement, and subject Customer to Early Termination Charges. Customer will also be liable for any damages resulting from unauthorized use of Xpedius' Services from Customer's premises.
- UPGRADES AND DOWNGRADES.** An Upgrade is defined as a change to Customer's existing service that may result in an increase in Customer's monthly Recurring Charges and/or Non Recurring Charges. If Customer upgrades Customer's existing Services or terminates Customer's existing Services, Early Termination Charges may apply. A Downgrade is defined as a change to Customer's existing service that may result in a decrease in Customer's monthly Recurring Charges. If Customer downgrades Customer's existing Services, Early Termination Charges may apply. Any downgrade of a Service must have a Term Commitment that extends at least to the end of Customer's existing Term Commitment.
- XSPEDIUS-OWNED CUSTOMER PREMISE EQUIPMENT.** Equipment installed by Xpedius to perform the Services under this Agreement is the sole property of Xpedius, and is referred to as Customer Premise Equipment ("CPE"). Xpedius has the right to access, maintain, remove, replace or take any other action in connection with the CPE at any time for any reason. At all times Customer shall: (1) refrain from physically tampering with or modifying CPE, or authorizing others to do the same; and (2) provide Xpedius with reasonable, sufficient and necessary access to Customer's facilities in order for Xpedius to fulfill its obligations under this Agreement. Customer shall provide Xpedius reasonable and necessary access to Xpedius' CPE at all reasonable times in the event Xpedius needs to retrieve its CPE during, or upon the expiration of this Agreement. Customer also agrees to cooperate with Xpedius in any communications with the landlord at the premises if required by Xpedius, even after the termination of this Agreement, so that Xpedius may retrieve physical possession of the CPE. Customer shall be responsible for any and all damage to the CPE caused by Customer or its end-user. Furthermore, Xpedius will not be responsible for any interference or interruption in Services that are related to or caused by customer-provided equipment. Customer is responsible for the removal and ongoing configuration of any equipment provided by Customer. If this equipment is not compatible or may not be used with the Service Customer has selected, and Customer terminates this Agreement or the Service, Customer will be responsible for all Non-Recurring Charges for the Services that are noted on Customer's Service Order Form, as well as any 3rd party costs Xpedius may have incurred.
- LIMITATION OF LIABILITY.** Customer's exclusive remedies under this Agreement shall be: (1) the termination rights set forth in Section 6, and (2) any credits for Outages specifically set forth in the Agreement. Xpedius shall not be liable for any of the following: (1) the content of the information passing over Xpedius' network; (2) unauthorized access to Customer's transmission facilities or to Customer owned equipment; (3) unauthorized access or damage to, alteration, theft, destruction or loss of, Customer records or data; (4) consequential, incidental, indirect or special damages, even if Xpedius is informed of their possibility; (5) claims for damages caused by Customer through fault, negligence or failure to perform Customer's responsibilities; (6) claims against Customer by any other party or (7) any act or omission of any other party furnishing services to Customer, or the installation and/or removal of any and all equipment supplied by any other service provider; (8) unauthorized publication, filing or advertisement of phone numbers; (9) interruption of service; (10) the liability of Xpedius, if any, for damages arising out of mistakes, omissions, misstatements, delays, errors or defects in the equipment provided by Xpedius, or for breach of the warranties set forth in this Agreement, shall in no event exceed the lesser of \$100,000 or five (5) months worth of monthly recurring charges for the Service that is the subject of the claim. IF ANY LIABILITY IS IMPOSED ON XSPEDIUS, SUCH LIABILITY SHALL BE LIMITED AS PROVIDED IN THIS AGREEMENT, WHICH SHALL BE XSPEDIUS' SOLE AND EXCLUSIVE LIABILITY REGARDLESS OF WHETHER LOSS OR DAMAGE IS CAUSED BY PERFORMANCE, NONPERFORMANCE, OR NEGLIGENCE OF XSPEDIUS UNDER THIS AGREEMENT. XSPEDIUS SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY 3RD PARTY WITH RESPECT TO ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE OR FOR THE LOSS OF REVENUE, PROFIT, DATA, OR ECONOMIC LOSS OF ANY KIND FOR ANY REASON WHATSOEVER.
- LIABILITY OF CUSTOMER.** In the event any claim, demand, lawsuit or liability is made or asserted against Xpedius by any third party and the same arises out of, or is directly or indirectly related to, or is caused by any act or omission of Customer or its customers, then, and in such event, Customer shall indemnify, defend and hold harmless Xpedius and its agents and representatives of and from any and all such claims, demands, causes of action and liability including the payment of Xpedius' reasonable attorney's fees to defend such claim. Additionally, the Customer shall reimburse Xpedius for damage to Xpedius' facilities caused by the negligence or willful act of the Customer, or resulting from the Customer's improper use of Customer's facilities or due to any malfunction of any facilities or equipment provided by an entity other than Xpedius. Xpedius will, upon reimbursement of damages, cooperate with Customer in prosecuting any claim against the person causing such damages and the Customer shall be subrogated to the right of recovery by Xpedius for the damages to the extent of such payment.
- WARRANTIES.** XSPEDIUS DOES NOT WARRANT UNINTERRUPTED OPERATION OF THE SERVICES AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES NOT MADE IN THIS AGREEMENT, EITHER EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- LETTERS OF AUTHORIZATION.** Customer will be required to execute a Letter of Authorization ("LOA") in the event Customer seeks Xpedius to act as an authorized agent for ordering and coordinating local and long distance access circuits for services outside of this Agreement. The LOA, when executed, shall be incorporated into this Agreement by reference.
- RECORDS.** Xpedius reserves the right to withhold insertion or full implementation of the Services until Xpedius has conducted a credit review of Customer. Depending on the credit review, Xpedius may require Customer to provide Xpedius a security deposit. If Customer is required to provide a deposit, such deposit will not exceed Customer's total estimated charges for three (3) months' service, or the maximum amount allowed by law, for all the Services Customer has with Xpedius.
- TRANSFER AND ASSIGNMENT.** Customer may not sell, assign or transfer any of Customer's rights or obligations under this Agreement without Xpedius' prior written consent. Xpedius may assign this Agreement upon notice to Customer.
- FORCE MAJEURE.** Any delay, interruption, or nonperformance of any provision of this Agreement on the part of Xpedius caused by conditions beyond Xpedius' reasonable control shall not constitute a breach of the Agreement, and the time for performance of such provision shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. Such examples include: but are not limited to, acts of God, elements, weather conditions, earthquakes, floods, fires, accidents, power failures, cable cuts caused by 3rd parties, acts or omissions of governmental authorities, monsoons or unusual rising to construction, or shortages of labor and materials.
- INSTALLATION REQUESTED INFORMATION.** In order to install Customer's Service, Xpedius may need Customer to provide Xpedius with certain information to enable the Service to be provisioned. Customer will be required to provide the requested information in a timely fashion. Time is of the essence. If Xpedius does not receive the requested information in a commercially reasonable time frame, and Customer terminates the Agreement, Customer will continue to be responsible for all Non-Recurring and Early Termination Charges as applicable.
- PRESS RELEASE, ANNOUNCEMENTS AND TRADEMARKS.** Neither Party will issue any press release (or make any other public announcement) related to this Agreement or the transactions contemplated hereby without prior approval from the other Party. Customer is also not licensed to use any of Xpedius' trademarks, service marks, or copyrighted information without the prior written approval from Xpedius.
- NOTICES.** All notices with the exception of invoices given in connection with this Agreement shall be made in writing and either delivered in person, or by a recognized overnight courier service, or sent via first class postage prepaid, certified mail, return receipt requested. All notices will be sent to the address set out on the Service Order Form. All notices, including but not limited to invoices, will be deemed served relative to the date of personal delivery the first business day after the date notice is sent via overnight mail, or on the third (3rd) business day after notice is sent via first class U.S. mail delivery. All notices to Xpedius should be addressed to: Xpedius Communications, LLC, Attention: Customer Care, 5555 Winghaven Blvd., 3rd Floor, OT/Alan, MO 63366. All legal notices and copies of notices shall be sent to: Xpedius Communications, LLC, Attention: General Counsel, 5555 Winghaven Blvd., 3rd Floor, OT/Alan, MO 63366. The notice address as provided above may be changed by written notice given as provided above.
- GOVERNING LAW.** This Agreement shall be construed and governed in accordance with the laws and venue of the State of Missouri.
- ENTIRE AGREEMENT.** This Agreement is the complete agreement between the parties concerning any telecommunications services provided by Xpedius hereunder and replaces any prior oral or written communications between the parties. Except for prior obligations of confidentiality and/or nondisclosure, there are no conditions, understandings, agreements, representations or warranties, expressed or implied, which are not specified in this Agreement.
- ADDITION/MODIFICATION.** This Agreement can only be modified by a written document executed by authorized representatives of each Party.
- SEVERABILITY.** In the event that any of the terms of this Agreement or the application of any such term shall be found to be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement or their application shall not be affected thereby and shall remain in full force and effect.



Terms and Conditions.
Internet ConneXions/ Data ConneXions/ Metro ConneXions

In addition to the General Terms and Conditions set forth on the back of the Service Agreement by and between Customer and Xpeditius, Customer hereby agrees and understands that the following terms and conditions shall also apply when Customer uses any of Xpeditius' Internet Services, including Internet ConneXions, Data ConneXions, and Metro ConneXions states of products.

Xpeditius' Responsibilities.

Access Circuit - Xpeditius will provision a telecommunications circuit for Internet Access Service, from the demarcation point¹ to Xpeditius' nearest or approved, Point of Presence (POP). Circuits are provisioned from Xpeditius or from third-party local exchange carriers and are based on availability. Xpeditius will order the circuit to be terminated at the demarcation point at Customer's site unless Customer instructs Xpeditius otherwise. Customer will be responsible for any fees charged by the local exchange carrier for the extension of the circuit to another location.

IP Address Allocation and Support - Xpeditius will allocate address space to Customer for the duration of this Agreement. Under ARIN recommendations, Xpeditius will not permit portability of Xpeditius IP address space. Xpeditius will route IP address networks obtained directly from ARIN, however, Xpeditius will not route IP address networks that Customer were assigned from another ISP, except when Customer is dually homed between that particular ISP and Xpeditius. Xpeditius will not provide reverse resolution for more than five /24 IP addresses issued to Customer by ARIN, or for any IP addresses owned by another ISP. Xpeditius will not provide private IP address subnets as set aside by the Internet Engineering Task Force (RFC1918).

Primary and Secondary DNS Support - Xpeditius will only provide Primary or Secondary DNS to those customers that have a contractual agreement with Xpeditius for such Services. Xpeditius will not provide Primary or Secondary DNS for ISPs, web hosting providers, or other telecommunications providers.

Service Activation - Internet Access Service implementation will be complete and billing will begin when any of the following applicable criteria have been met:

- Any Xpeditius supplied CPE is installed and operational
- IP connectivity to the Internet (including routing outside Xpeditius' network exists)
- Xpeditius Network Operations verifies IP routing through a trace-route test, via the CPE router
- If Xpeditius registers a domain on Customer's behalf, Customer's domain is registered with Internet
- Xpeditius supplied Primary and/or Secondary DNS are operational for Customer's domain
- Any required packet filtering has been installed on the CPE router
- Any Xpeditius supplied firewall is established

Billing will not be delayed if, for any reason, any set or omission by Customer causes a delay in the provision of services.

Management and Monitoring - Xpeditius will be responsible for the on-going management and troubleshooting of all components up to the demarcation point 24 hours a day 7 days a week. Xpeditius shall be responsible for all configuration, management, and troubleshooting up to the demarcation point. Customer shall be responsible, and shall hold Xpeditius harmless from, any defect, failure or problem arising from beyond the demarcation point, including all equipment, cabling, software, configuration, and management.

Newsfeed Service - Xpeditius offers full newsfeeds only. Customer's customers are not allowed to direct their newswriters to Xpeditius' servers for news service. Customer will not have the ability to restrict specific newswriters or hierarchies from being fed to Customer's server.

Packet Filtering - Performance measurements or specifications under this Agreement do not apply to packet filtering, which are not guaranteed.

¹The demarcation point for these Services is the established mean demarcation point for the telecommunications access circuit at Customer's site. Extended demarcation to another location at Customer's site may be available at an additional charge which Customer must pay in advance.

Customer's Responsibilities

Customer-provided information. In order to appropriately activate and maintain Customer's service, Customer must provide Xpeditius with the following information in a timely manner: Customer on or off-site contacts (including escalation lists and off-hours contacts); and all technical information reasonably required by Xpeditius to perform Xpeditius' responsibilities.

Security. Customer must make any and all provision for establishing proper security for Customer's Internet or data access service.

Management and Monitoring. Customer is responsible for managing the equipment located on the LAN side of the router ("LAN Environment"). If Xpeditius isolates a problem beyond the demarcation point, as defined above, Customer shall be solely responsible for fault resolution and completion. Customer shall have no remedy or claim for service outages or degradations resulting from any actions beyond the demarcation point. If Customer supplies its own CEQ, Customer shall ensure that its equipment meets Xpeditius hardware and software configuration guidelines. Customer shall be responsible for configuration, monitoring, and maintenance of all CPE and CEQ after initial installation. Xpeditius shall provide initial configuration of CPE or CEQ purchased from Xpeditius, however, Customer shall remain responsible for ongoing configuration monitoring, and maintenance, unless router maintenance services are set out in Customer's Service Order Form.

IP Address. Xpeditius shall allocate address space during the installation process. It is required that documented justification be submitted to Xpeditius prior to the allocation of address space. The number of IP addresses allocated will be based on ARIN guidelines and will have no impact on Customer's agreement to accept Service. If Customer requires larger blocks of address space, Customer must petition ARIN directly. Upon termination Customer shall be required to forfeit any allocated address space to Xpeditius, and provide Xpeditius with authorization to release Customer's address space.

Network Performance Measurements

Xpeditius endeavors to maintain the following network service measurements:

	Internet	Frame	ATM
Availability ²	99.999%	99.999%	99.999%
Median round-trip latency ³	60 milliseconds	100 milliseconds	100 milliseconds
packet loss ⁴	0.5%		
Delivery Rate		99.9% CIR 99% non-CIR ⁵	99.9% SCR 99% non-SCR ⁵

²Internet Availability is defined as the ability for Xpeditius' customers to exchange traffic from their network, across Xpeditius' network to Xpeditius' Internet peering points. Frame and ATM availability only covers Internet Services and includes on-net ports and PVCs. Internet, Frame and ATM availability are all measured from the point of egress on Xpeditius' network. Availability of access through the CPE is not guaranteed unless Xpeditius provides Managed Router or Managed Firewall service, in which case availability of access through the CPE is guaranteed under the terms of the Managed Router or Managed Firewall service. Availability of access through the local loop to Xpeditius' network is not guaranteed, unless Xpeditius provides the local loop entirely on Xpeditius' own facilities.

³Median round-trip latency - Xpeditius uses "median" rather than "mean" (average) because it provides a more accurate network performance parameter that is not affected by performance anomalies. The median number will be determined by evaluating samples taken throughout the calendar month.

⁴Average packet loss will be calculated by evaluating samples taken from tests run between Xpeditius' network core hubs over the course of a calendar month.

⁵Not applicable to 1) PVCs with CIR/SCR less than 25% of port speed or 2) port over-subscribed by more than 200%

Outage Credits

Customer will be eligible to receive a credit for any outages that Customer experiences due to unavailability of the Service or when the Customer experiences more than 20% packet loss within Xpeditius' network. In order to receive an outage credit, Customer must open a trouble ticket with Customer Care. Credits will be given based upon the outage time recorded in the applicable trouble ticket. Customer will be eligible for a credit on Customer's invoice based upon the following schedule: if the outage is greater than 30 minutes, but less than 4 hours, Customer will be eligible for a credit equal to the value of one day's Service; if the outage is for greater than 4 hours in duration, Customer will be eligible for a credit equal to the value of two days' Service. The maximum credit available in any calendar month is 50% of the monthly recurring charges for the affected Service. Customer will not receive outage credits attributable to 1) planned, scheduled or routine maintenance; 2) any Customer-owned or -ordered telephone company circuits; 3) Customer's local loop; 4) a fault in Customer's applications, equipment, or facilities; 5) acts or omissions of Customer, or any user of the service authorized by Customer; 6) reasons of Force Majeure (as defined in the General Terms and Conditions of the Service Agreement); or 7) any internet access or related problems beyond the demarcation point of Xpeditius' Internet peering points. This shall be Customer's sole and exclusive remedy and Xpeditius' sole obligation with regard to any outage unless otherwise expressly noted in the Agreement.

Requesting a Credit. To receive a credit, Customer must contact Xpeditius' Customer Care Center within five (5) days of the outage, and provide the Customer Care representative with the following information:

- 1) Customer's company name
- 2) Sufficient information which will allow Xpeditius to contact Customer;
- 3) The date(s) and duration(s) of event(s); and
- 4) The Xpeditius trouble ticket numbers Customer has been given by Xpeditius Customer Care that was associated with the outage.

Upon Xpeditius' sole determination that an outage took place, Customer will receive the appropriate Outage Credit.

XSP 000005

REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services. (T)

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.

Issued: March 5, 2003

Effective: _____

James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

XSP 000006

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this price list or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- G) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

XSP 000007

Issue Date: June 14, 2002

Effective Date: February 12, 2003

Issued By: James C. Falvey, Sr. Vice President Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

XSP 000008

Issue Date: June 14, 2002

Effective Date: February 12, 2003

Issued By: James C. Falvey, Sr. Vice President Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- E) The Customer will be assessed a charge of fifteen (\$15.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges.
- G) If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds that are not immediately available, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by the lesser of the highest percentage allowable by the Louisiana Public Service Commission or a late factor of 1.5% per month.

2.5.2.1 Contested Charges

- A. All bills are presumed accurate, and shall be binding on the Customer unless objection is received by the Company no more than fifteen days (15) days after such bills are rendered. In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer may take the following course of action no more than fifteen (15) days after the billing date:
 - 1) First, the Customer may request, and the Company will provide, an in-depth review of the disputed amount. (The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.)

REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- G) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

2.5.2 Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.3 Billing and Collection of Charges

2.5.3.1 Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.

2.5.3.2 The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.

Issued: September 5, 2003

Effective Date: October 6, 2003

Issued By:

James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment arrangements - (Cont'd)

2.5.3 Billing and Collection of Charges (Cont'd)

- 2.5.3.3 When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- 2.5.3.4 Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- 2.5.3.5 The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refuses to honor.
- 2.5.3.6 Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- 2.5.3.7 If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges.

Issued: September 5, 2003

Effective Date: October 6, 2003

Issued By:
James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

XSP 000013

REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) The Customer will be assessed a fee not to exceed the statutorily allowed charge for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- G) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges

REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) The Customer will be assessed a charge of ten dollars (\$10.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- G) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges

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James C. Falvey
Vice President, Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

A) Taxes

The Customer is responsible for payment of any universal service, sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- F) Customers have up to 90 days (commencing 5 days after remittance of the bill) to initiate a dispute over charges or to receive credits.
- G) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- L) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- M) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.3, and the further limitations provided in this Section.
- N) The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) an estimated bill for two regular billing periods.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit with accrued interest, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may return the deposit.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Alabama Public Service Commission without deductions for any taxes on such deposits.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any regulated amounts owing to the Company by a business Customer, the Company may, by giving 5 days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- E) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- F) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.
- K) The Company's Year 2000 readiness depends on the readiness of numerous third parties, including third party vendors, whose Year 200 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data and other equipment and supplies.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Florida Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this price list, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- A) Upon the use of service or facilities for calls, anonymous or otherwise, in a manner reasonably to be expected to frighten, abuse, torment, or harass another, the Company may immediately discontinue service without incurring any liability.
- I) The Company reserves the right to cancel any contract for service with, and to discontinue service to, any person who uses or permits the use of obscene, profane or grossly abusive language over, or by means of, the Company's facilities, and who, after reasonable notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same, and to remove its property from the premises of such person.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.
- K) The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Georgia Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

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James C. Falvey
Sr. Vice President, Regulatory Affairs
Xspedius Communications, LLC.
7125 Columbia Gateway Drive, Suite 200
Columbia, MD 21046

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- H) Upon the use of service or facilities for calls, anonymous or otherwise, in a manner reasonably to be expected to frighten, abuse, torment, or harass another, the Company may immediately discontinue service without incurring any liability.
- I) The Company reserves the right to cancel any contract for service with, and to discontinue service to, any person who uses or permits the use of obscene, profane or grossly abusive language over, or by means of, the Company's facilities, and who, after reasonable notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same, and to remove its property from the premises of such person.

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.3 Terms and Conditions (Cont'd)

2.1.3.8 To the extent that either the Company or any other telephone company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its customers. At the reasonable request of either party, the Company and the other telephone company shall join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

2.1.4 Liability of the Company

2.1.4.1 The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

2.1.4.2 The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

2.1.4.3 The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.

2.1.4.4 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer provided equipment or facilities.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

2.1.4.5 The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4.5 as a condition precedent to such installations.

2.1.4.6 The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.

2.1.4.7 The Company shall be indemnified, defended and harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (cont'd)

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

2.1.4.8 The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.

2.1.4.9 **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**

2.1.4.10 With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.

2.1.4.11 The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

1. any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
2. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements - (Cont'd)

2.5.4 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

2.5.5 Deposits

2.5.5.1 To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:

- (a) two month's charges for a service or facility that has a minimum payment period of one month; or
- (b) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements - (Cont'd)

2.5.5 Deposits (Cont'd)

2.5.5.2 A deposit may be required in addition to an advance payment.

2.5.5.3 When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.

2.5.5.4 Deposits held will accrue interest at a rate of 6% pursuant to KRS 278.460.

2.5.6 Disconnection of Service

2.5.6.1 Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.

2.5.6.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

2.5.6 Disconnection of Service (Cont'd)

2.5.6.3 Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

2.5.6.4 Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

2.5.6.5 In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.

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James C. Falvey, Sr. Vice President
Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

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REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

2. REGULATIONS (Cont'd)

2.5 Payment Arrangements (Cont'd)

2.5.6 Disconnection of Service (Cont'd)

2.5.6.6 Upon the Company's discontinuance of service to the Customer under Section 2.5.6.1 or 2.5.6.2, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

2.5.6.7 Upon the use of service or facilities for calls, anonymous or otherwise, in a manner reasonably to be expected to frighten, abuse, torment, or harass another, the Company may immediately discontinue service without incurring any liability.

2.5.6.8 The Company reserves the right to cancel any contract for service with, and to discontinue service to, any person who uses or permits the use of obscene, profane or grossly abusive language over, or by means of, the Company's facilities, and who, after reasonable notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same, and to remove its property from the premises of such person.

2.5.7 Cancellation of Application for Service

2.5.7.1 Applications for service cannot be canceled without the Company's agreement. Where the Company permits a Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.

2.5.7.2 Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service commenced (all discounted to present value at six percent).

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Regulatory Affairs
Xspedius Management Co., LLC
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Columbia, Maryland 21046

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

Issue Date: June 14, 2002

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Issued By: James C. Falvey, Sr. Vice President Regulatory Affairs
Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.
- K) The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

2.5.2.1 Contested Charges (Cont'd)

- 2) Second, if there is still a disagreement about the disputed amount after investigation and review by the Company, the Customer may file an appropriate complaint with the Louisiana Public Service Commission. The address of the Commission is:

One American Place, Suite 1630
Post Office Box 91154
Baton Rouge, Louisiana 70821

Billing inquiries may be directed to the Company at 1-708-573-1800)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
 - 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Louisiana Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 5 days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

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Xspedius Management Co., LLC
7125 Columbia Gateway Drive, Suite 200
Columbia, Maryland 21046

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.
- K) The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
 - 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Mississippi Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

The Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
 - 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the South Carolina Public Service Commission without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- A) Upon nonpayment of any amounts owing to the Company by a business Customer, the Company may, by giving 5 days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service (Cont'd)

- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- H) Upon the use of service or facilities for calls, anonymous or otherwise, in a manner reasonably to be expected to frighten, abuse, torment, or harass another, the Company may immediately discontinue service without incurring any liability.
- I) The Company reserves the right to cancel any contract for service with, and to discontinue service to, any person who uses or permits the use of obscene, profane or grossly abusive language over, or by means of, the Company's facilities, and who, after reasonable notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same, and to remove its property from the premises of such person.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company

- A) The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnities and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- I) **THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**
- J) With respect to directory listings, the Company's liability shall be limited to the provisions of Section 6.1.1, and the further limitations provided in this Section.

REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- K) The Company's Year 2000 readiness depends on the readiness of several third party vendors whose Year 2000 readiness the Company cannot control. Due to the interdependence among telecommunications providers and the interrelationship with non-Company processes, equipment and systems, the Company is not responsible for Year 2000 failures caused by circumstances beyond its control, including, but not limited to failures caused by: 1) the Customer; 2) other telecommunications provider; 3) customer premises equipment; or 4) suppliers of hardware, software, data, and other equipment and supplies.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

REGULATIONS

2.3 Obligations of the Customer (Cont'd)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- A) any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.3 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
 - 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Tennessee Regulatory Authority without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.4 Deposits

- A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
 - 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- D) Deposits held will accrue interest at a rate in accordance with the rules of the Tennessee Regulatory Authority without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.



XSPEDIOUS COMMUNICATIONS SERVICES AGREEMENT General Terms and Conditions

This Service Agreement ("Agreement") is between Xpedious Communications, LLC on behalf of its applicable service providing entity ("Xpedious") and the individual or entity entered in the customer (sometimes referred to as "Customer") on the front page of this Agreement. This Agreement consists of the signature page, Service Order Form(s) (the General Terms and Conditions, and any addenda added by the agreement to the terms. The following rates, terms and conditions supplement those set out in the applicable Xpedious Federal and State tariffs, and interstate and intrastate service agreements posted on Xpedious' web site (formerly our FCC tariffs) hereinafter collectively referred to as "tariffs" or "tariffs"). In the event of any conflict among this Agreement and its Addenda, Attachments, Service Order Form, or the terms or rates of Xpedious' tariffs, the terms and rates of the tariffs shall control if the service is not modified. The Parties agree to be bound by the terms of this Agreement and Xpedious will provide the Services referenced above in accordance with the terms of this Agreement and of Xpedious' applicable tariffs.

1. **SERVICES.** Xpedious agrees to provide all information, access and support required for timely installation and proper use of the Services and to comply with all of the terms and conditions of this Agreement. Customer also agrees and warrants that Customer's use of the Services will at all times be consistent with the use intended in not violated in any unlawful manner, and is usable in such a manner as to not cause damage to Xpedious' network or equipment.

2. **TERM/COMMITMENT.** For each Service, the initial term commitment ("Initial Term") of this Agreement will begin on the date a requested Service is first installed and made available to Customer and will continue for the number of months or years set forth in the applicable Service Order Form. Upon the expiration of the Initial Term, this Agreement automatically renews for a one (1) year term at the same rates as the terms and conditions of this Agreement unless either Party provides notice of intent to terminate the Agreement in writing thirty (30) days prior to the end of the then current term.

3. **FEES AND CHARGES.** The charges and fees for Xpedious' Services are categorized on the applicable Service Order Form as (1) "Recurring Charges" and (2) "Non-Recurring Charges." Recurring Charges are billed monthly to Customer. Non-Recurring Charges shall be billed as they occur. All Charges will begin to accrue at the time such Services have been activated. Any applicable Federal State or local use, excise, sales or privilege taxes, duties or similar liabilities charged to or against Xpedious or Customer because of the Service and equipment furnished by Xpedious, shall be paid by the Customer. Customer will not be billed for taxes or fees based on Xpedious' income. In addition, Xpedious may bill Customer for other key-typing applicable charges including, but not limited to, Federal End User Common Line Charge (EULC), Pre-Subscribed Inter-Exchange Carrier Charge (PICC), Local Number Portability ("LNP") Charge, Federal and State Universal Service Fund (USF) and Primary Inter-Exchange Carrier (PIC) Charge. The charges for the Services, not including the taxes and regulatory charges, Xpedious also offer additional Service features that may be ordered, for an additional cost, after Service is initially installed. Customer will be liable for all reasonable charges including but not limited to attorney's fees and costs incurred by Xpedious to enforce the terms of this Agreement or due to Customer's non-compliance with the terms herein.

4. **PAYMENT.** Customer will be invoiced monthly. Customer's first invoice will include all Non-Recurring Charges, Recurring Charges for the first full month, any additional Charges incurred as a result of Customer's special requests (such as expedited charges) and the pro-rated amount for Services provided during installation. Customer agrees to pay all charges within thirty days of the date of Xpedious' invoice to Customer ("Due Date"), excluding charges which Customer disputes in a timely manner in good faith and in accordance with the dispute provisions set forth in this Agreement. Customer shall pay Xpedious interest on unpaid invoices if payment is made after the Due Date. The interest rate will be one and a half percent (1 1/2%) per month or the maximum rate allowable by law. If Customer's check is returned for non-payment, Customer will be billed a return check fee. Xpedious reserves the right to bill Customer retroactively for any Services Customer received without payment if Customer has an outstanding balance. Subject to any applicable state and federal regulations, Xpedious may not be required to transfer transportation, toll-free, local or other numbers to another carrier if Customer has an outstanding balance.

5. **INTERRUPTION OF SERVICE/CREDIT.** For an interruption of tariffed Services ("Interruption"), the liability of any of Xpedious arising out of or in any way connected with any defect, error, omission, delay, misuse, interruption, suspension, or other failure in connection with furnishing services, facilities or maintenance, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected service for the time period during which the interruption occurred. Xpedious shall not be liable, nor shall any credit be given to a Customer, for any interruption of less than Twenty-Four (24) hours which is: (1) caused by the failure or negligence of the interexchange carrier; Customer or any entity other than Xpedious; (2) due to the failure of equipment, equipment or services provided by the Customer or any other entity other than Xpedious; or (3) during periods when the Customer elects to use the Service on an unpaid basis.

6. **TERMINATION BY XSPEDIOUS.** If Customer does not pay all undisputed charges by the Due Date, Customer will be in default of this Agreement. Xpedious reserves the right to terminate this Agreement if it determines in its reasonable business judgment that it will not continue to provide such Services under the Agreement. In that event, Xpedious will provide no less than thirty (30) days prior notice of such termination.

7. **TERMINATION BY EITHER PARTY.** Either Party shall have the right to terminate this Agreement without liability, including Early Termination Charges, (1) if Xpedious is notified from furnishing the Service(s) under this Agreement, or if any material fact or term contained herein is substantially changed by order of the highest court of competent jurisdiction to which the matter is appealed, the Federal Communications Commission or other local, State or Federal government authority or (2) upon expiration of the Initial Term Commitment by providing the other party 30 days written notice.

8. **EARLY TERMINATION CHARGES.** If a Service or this Agreement is terminated prior to the end of the Initial Term, then, commencing on the effective date of such termination, Customer will be subject to early termination charges equal to one hundred percent (100%) of the monthly recurring charges times the number of months remaining in the Term commitment, plus any waived installation fees and 3% party discounting and/or construction costs ("Early Termination Charges"). Customer agrees to pay all such Early Termination Charges within thirty days of Customer's notice of termination or unavailability upon receipt of Xpedious' last invoice to Customer ("Final Invoice"). All requests to terminate Services must be submitted in writing to Xpedious 30 days prior to the termination effective date.

9. **BILL DISPUTES.** Customer's billing dispute or request for adjustments together with all supporting documentation must be made in good faith and must be received in writing by Xpedious within 60 days from the date of the invoice or Customer's right to raise such billing dispute is waived. Customer shall otherwise timely pay any undisputed amounts. If Xpedious determines that a disputed charge was billed in error, Xpedious will issue a credit to reverse the amount that was incorrectly billed. If Xpedious determines that a disputed charge was billed correctly, Xpedious will inform Customer of such determination and provide Customer with proof of such billing. If Customer does not accept proof as definitive, the dispute will be escalated for an officer review/mediation with Xpedious Communications and Customer in accordance with the Agreement. In the event that the escalated dispute is resolved against Customer or in the event that Customer accepts the foregoing proof as definitive (or if Customer fails to notify Xpedious within 30 days that Customer does not accept proof as definitive), "Dispute" arising under this Agreement shall be resolved in accordance with the procedure set forth herein. In the event of a Dispute, and upon the written request of either Party, each of the Parties shall appoint within five (5) Business Days after a Party's receipt of such request, a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they determine to be necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable access to relevant information from one party to the other shall be provided. If the parties are unable to resolve issues related to a Dispute within thirty (30) days after a party's request is made for appointment of designated representatives at set times, each Party may seek any relief to which it is entitled to under Applicable Law.

10. **USE OF SERVICES.** Xpedious' Acceptable Use Policy ("AUP") governs Customer's use of Xpedious' Services. Xpedious' AUP discusses policies including, but not limited to, security, email, the Internet, and copyright matters. Customer agrees to fully comply with the AUP. Customer can review the current copy of Xpedious' AUP by logging on to the website at <http://www.xpedious.com>. The AUP is incorporated into this Agreement by reference. Xpedious' AUP is dynamic and may be modified from time to time without prior notice to Customer. At any time, Customer may also send Xpedious a written request for the most recent copy of the AUP. Xpedious may investigate all alleged violations of the AUP and may be reasonably able to do so or otherwise not barred by any governmental intervention, Xpedious will provide a reasonable opportunity for Customer to resolve the alleged dispute. Violation of the AUP by Customer or any of Customer's customers may result in immediate termination of this Agreement, and subject Customer to Early Termination Charges. Customer will also be liable for any damages resulting from unauthorized use of Xpedious' Services from Customer's premises.

11. **UPGRADES AND DOWNGRADES.** An Upgrade is defined as a change to Customer's existing service that may result in an increase in Customer's monthly recurring charges and/or Non-Recurring Charges. If Customer upgrades Services, Early Termination Charges will not be applied. A Downgrade is defined as a change to Customer's existing Service or partial disconnect that results in a decrease in Customer's monthly recurring charges. If Customer downgrades Services before the end of the Term commitment, the Downgrade results in more than a 15% decrease in the monthly recurring charges on the cancelled Services, Early Termination Charges will apply. Thirty (30) days written prior notice is required for all downgrades. Any downgrade of a Service must have a Term commitment that extends at least to the end of Customer's existing Term commitment.

12. **XSPEDIOUS-OWNED CUSTOMER PREMISES EQUIPMENT.** Equipment installed by Xpedious to perform the Services under this Agreement is the sole property of Xpedious, and is referred to as Customer Premise Equipment ("CPE"). Xpedious has the right to access, maintain, remove, replace or take any other action in connection with the CPE at any time for any reason. At all times Customer shall: (1) protect CPE from physical tampering with or modifying CPE or authorize others to do the same; and (2) provide Xpedious with reasonable, sufficient, and necessary access to Customer's facilities in order for Xpedious to fulfill its obligations under this Agreement. Customer shall provide Xpedious reasonable and necessary access to Xpedious' CPE at all reasonable times in the event Xpedious needs to maintain its CPE, or upon the expiration of this Agreement. Customer also agrees to cooperate with Xpedious in any communications with the landlord at the Premises if requested by Xpedious even after the termination of this Agreement, so that Xpedious may retrieve physical possession of the CPE. Customer shall be responsible for any and all damage to the CPE caused by Customer or its end users. Furthermore, Xpedious will not be responsible for any interference or interruption in Services that are related to or caused by customer-provided equipment. Customer is responsible for the rental and ongoing configuration of any equipment provided by Customer. If this equipment is not compatible or may not be used with the Services Customer has selected, and Customer terminates this Agreement at the Service, Customer will be responsible for all Non-Recurring Charges for the Services that are not on Customer's Service Order Form, as well as any 3% party costs Xpedious may have incurred.

13. **LIMITATION OF REMEDY.** Xpedious' exclusive remedies under this Agreement shall be: (i) the termination rights set forth in Section 6, and (ii) any credits for Charges specifically set forth in the Agreement. Xpedious shall not be liable for any of the following: (1) the loss of or damage to any of the information passing over Xpedious' network; (2) unauthorized access to Customer's transmission facilities or to Customer-owned equipment; (3) unauthorized access or damage to, alteration, theft, destruction or loss of, Customer records or data; (4) consequential, incidental, or special damages, even if Xpedious is informed of their possibility; (5) claims for damages caused by Customer through fault, negligence or failure to perform Customer's responsibilities; (6) claims against Customer by any other party; or (7) any act or omission of any other party furnishing services to Customer or the installation, use, or removal of any and all equipment supplied by any other service provider, incorrect publication listings or advertisements of phone numbers. Notwithstanding the foregoing, the liability of Xpedious, if any, for damages arising out of, from, or in connection with the Services or equipment provided by Xpedious, or for breach of the warranties set forth in this Agreement, shall in no event exceed the lesser of \$100,000 or five (5) months' worth of paid monthly recurring charges for the Service that is the subject of the claim.

14. **WHETHER LOSS OR DAMAGE IS CAUSED BY PERFORMANCE, NONPERFORMANCE, OR NEGLIGENCE OF XSPEDIOUS UNDER THIS AGREEMENT, XSPEDIOUS SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY OTHER PARTY WITH RESPECT TO ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE FOR THE LOSS OF REVENUE, PROFIT, DATA, OR ECONOMIC LOSS OR ANY KIND FOR ANY REASON WHATSOEVER.**

15. **LIABILITY OF CUSTOMER.** In the event any claim, demand, lawsuit or liability is made or asserted against Xpedious by any third party and the same arises out of or is caused by any act or omission of Customer or its customer, then, and in such event, Customer shall indemnify and hold harmless Xpedious and its agents and representatives of and from any and all such claims, demands, causes of action and liability including the payment of Xpedious' reasonable attorney's fees to defend such action. Additionally, the Customer shall reimburse Xpedious for damage to Xpedious' facilities caused by the negligence or willful act of the Customer, or resulting from the Customer's employee use of Customer's facilities or due to any malfunction of any facilities or equipment provided by an entity other than Xpedious. Xpedious will, upon reimbursement of damages, cooperate with Customer in prosecuting any claim against the person causing such damages and the Customer shall be subrogated to the right of recovery by Xpedious for the damages to the extent of such payment.

16. **WARRANTIES.** XSPEDIOUS DOES NOT WARRANT UNINTERRUPTED OPERATION OF THE SERVICES AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES NOT MADE IN THIS AGREEMENT EITHER EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17. **LETTERS OF AUTHORIZATION.** Customer will be required to execute a Letter of Authorization ("LOA") in the event Customer seeks Xpedious to act as an authorized agent for ordering and continuing local and long distance access circuits for services outside of this Agreement. The LOA, when executed, shall be incorporated into this Agreement by reference.

18. **DEPOSIT.** Xpedious reserves the right to withhold installation or full implementation of the Services until Xpedious has conducted a credit review of Customer. Depending on the credit review, Xpedious may require Customer to provide Xpedious a security deposit. If Customer is required to provide a deposit, such deposit will not exceed Customer's total estimated charges for three (3) months' services or the maximum amount allowed by law for all the Services Customer has with Xpedious.

19. **TRANSFER AND ASSIGNMENT.** Customer may not sell, assign or transfer any of Customer's rights or obligations under this Agreement without Xpedious' prior written consent. Xpedious may assign this Agreement upon notice to Customer.

20. **FORCE MAJEURE.** Any delay, interruption, or nonperformance of any provision of this Agreement on the part of Xpedious caused by conditions beyond Xpedious' reasonable control shall not constitute a breach of the Agreement, and the time for performance of such provision shall be deemed to be extended for a period equal to the duration of the condition preventing performance. Such events, but not limited to, acts of God, elements, weather conditions, earthquakes, fires, accidents, power failures, cable cuts caused by 3rd parties, acts or omissions of governmental authorities, communications outages or interruptions relating to construction or shortages of labor and materials.

21. **INSTALLATION REQUESTED INFORMATION.** In order to install Customer's Service, Xpedious may need Customer to provide Xpedious with certain information to enable the Service to be provisioned. Customer will be required to provide the requested information in a timely fashion. If Xpedious does not receive the requested information in a commercially reasonable time frame, Xpedious terminates the Agreement. Customer will continue to be responsible for all Non-Recurring and Early Termination Charges as applicable.

22. **PRESS RELEASE, ANNOUNCEMENTS AND TRADE SHOWS.** Neither Party will issue any press release (or make any other public announcement) related to this Agreement or the services contemplated hereby without prior approval from the other Party. Customer is not authorized to use any of Xpedious' trademarks, service marks, or copyrighted information without the prior written approval from Xpedious.

23. **NOTICES.** All notices, with the exception of invoices, given in connection with this Agreement shall be made in writing and either delivered in person, or by a recognized overnight carrier service, or sent via first class postage prepaid, certified mail, return receipt requested. All notices will be sent to the address set out on the Service Order Form. All notices, including but not limited to invoices, will be deemed served return to the date of personal delivery the first business day after the due date is sent via overnight mail, or on the third (3) business day after notice is sent via first class U.S. mail delivery. All notices to Xpedious should be addressed to Xpedious Communications, LLC, Attention: Customer Care, 3555 Winghaven Blvd., 3rd Floor, Ottawa, MO 63366. All legal notices and copies of notices shall be sent to Xpedious Communications, LLC, Attention: General Counsel, 3555 Winghaven Blvd., 3rd Floor, Ottawa, MO 63366. The notice address as provided above may be changed by written notice given as provided above.

24. **GOVERNING LAW.** This Agreement shall be construed and governed in accordance with the laws and venue of the State of Missouri.

25. **ENTIRE AGREEMENT.** This Agreement is the complete agreement between the parties concerning any telecommunications services provided by Xpedious hereunder, and supersedes any prior oral or written communications between the parties. Except for prior obligations of confidentiality and/or nondisclosure, there are no conditions, understandings, agreements, representations or warranties expressed or implied, which are not specified in this Agreement.

26. **AMENDMENT/MODIFICATION.** This Agreement can only be modified by a written document executed by authorized representatives of each Party.

27. **ASSIGNABILITY.** In the event that any of the terms of this Agreement or the application of any such term shall be to be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement or their application shall not be affected thereby, and shall remain in full force and effect.

Joint Petitioners
North Carolina Utilities Commission
Docket Nos. P-772, Sub 8 *et al.*
BellSouth's 1st Set of Interrogatories
December 7, 2004

ATTACHMENTS TO
REQUEST NO. 47

**BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION**

In the Matter of:

BellSouth Telecommunications, Inc.
Petition for Declaratory Ruling
Regarding Transit Traffic

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Docket No. 16772-U

MEMORANDUM OR UNDERSTANDING

In an effort to resolve the issues in this proceeding, BellSouth Telecommunications, Inc. ("BellSouth") and Georgia Telephone Association ("GTA") and its member companies ("Parties") enter into this Memorandum of Understanding. It is understood and agreed between the Parties that this Memorandum of Understanding is a compromise of a dispute, and the execution of this Memorandum of Understanding is not to be construed as an admission of liability or an acknowledgement of the appropriateness of any compensation arrangement on the part of any of the Parties, which is expressly denied. Nothing in this Memorandum of Understanding shall preclude any Party from participating in any Georgia Public Service Commission proceeding or proceeding before the Federal Communications Commission ("FCC") relating to any issue, including those related to transit traffic and interconnection with rural carriers. The Parties enter into Memorandum of Understanding without waiving or prejudicing any positions they have taken previously, or may take in the future, in any judicial, legislative, regulatory, or other public forum addressing any matters, including matters specifically related to, or other types of arrangements prescribed in this Memorandum of Understanding.

1. For traffic originated by ICOs and facility-based CLECs, BellSouth will provide to the terminating carrier industry standard call detail records (EM1 Category 11) identifying the originating carrier and the MOUs of carrier traffic for each such provider. Records will be generated and delivered daily, weekly, or monthly using the information provided by the originating carrier. CIC and/or OCN information, billing contact name and billing address will be provided for each CLEC and ICO to the ICOs and CLECs initially, and whenever new information warrants it.

2. BellSouth will provide assistance to the ICOs and CLECs in resolving billing disputes that may arise. This assistance will be provided at no cost to the parties. Such assistance will take the following forms:

First, BellSouth will provide timely billing assistance to the parties. This assistance shall include (1) pulling EM1 records to verify the correct CIC codes, trunk groups, and OCN; (2) checking the LNP database to verify that the Billing Telephone Number ("BTN") has not been ported to another carrier, and (3) conducting queries and otherwise conducting test calls to ascertain jurisdictional status.

XSP 000001

Second, where technically feasible, BellSouth will perform traffic studies for the CLECs and ICOs using the Agilent system under the following circumstances. BellSouth will conduct an initial traffic study for each CLEC or ICO using the Agilent system to establish a baseline of the jurisdictional nature of traffic terminating to the CLEC or ICO. After the initial study, BellSouth will conduct, upon request of a CLEC or ICO, an annual traffic study using the Agilent system of traffic terminating to that CLEC or ICO for a specific period in time. Additionally, BellSouth will conduct Agilent studies upon request of a CLEC or ICO due to material changes in volume or documented billing disputes. BellSouth will only conduct such studies and provide the results to the CLEC or ICO, who will be responsible for any substantive or quantitative analysis. In the event the traffic study is conducted by a CLEC or ICO third-party vendor, BellSouth will cooperate in this study to the extent necessary.

3. BellSouth will cease payment of termination charges to the ICOs associated with CLEC-originated traffic, conditioned upon BellSouth's providing to the ICOs valid billing data as specified herein. BellSouth will work with the ICOs to establish appropriate audit procedures and to execute necessary contract amendments to implement these billing arrangements.

4. Local traffic will not be subject to access charges.

5. For purposes of this docket, the definition of "local transit traffic" is defined by the ICO's local tariff limited to the basic service area, mandatory EAS and Commission mandated countywide calling.

6. For indirect transit arrangements, and because the parties expect the volume of traffic between the CLECs and the ICOs to be relatively small and sufficiently in balance, there will be no compensation between the *originating and terminating* parties for the termination of local traffic. The transiting carrier will still be compensated for the transit function. A CLEC may continue to utilize the indirect transit arrangement until such time as the volume of traffic exceeds a monthly aggregate of 500,000 MOUs for a consecutive three (3) month period with an ICO. At such time as the volume exceeds this level, either party (the ICO or the CLEC) may request a conversion to direct interconnection.

7. Any intraLATA toll traffic as defined by reference to the ICO's LCA will be delivered to the end user's intraLATA toll provider, and the originating and terminating carriers will bill originating and terminating access, as appropriate, to that toll (not transit) provider. Any toll traffic will adhere to applicable industry standards and terms contained in interconnection agreements for routing.

8. The originating party shall be responsible for payment of transit fees, as applicable, to the point where the originating party's network connects with the transit providers' network. The rate for transit, if applicable, shall be established based upon the interconnection agreement between the parties or as ordered by the Georgia Public Service Commission in the context of a generic docket.

BELLSOUTH TELECOMMUNICATIONS, INC.

GEORGIA TELEPHONE ASSOCIATION